UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

FREEMAN DECORATING CO.

and Case 18-CA-14810

UNITED STEELWORKERS OF AMERICA, AFL-CIO, CLC, DRAPERY, SLIP COVER, WINDOW SHADE, VENETIAN BLINDS, EXHIBITION, FLAG AND BUNTING DECORATORS UNION, LOCAL NO. 17U

and Cases 18-CA-14922
18-CA-14964
18-CA-15057

DAN BRADY, An Individual

BREDE, INC.

and Case 18-CA-14846

STEELWORKERS, LOCAL 17U

and Case 18-CA-14963

DAN BRADY, An Individual

UFCW LOCAL 653 (Excel Decorators, Inc.)

and Case 18-CB-3847

UFCW LOCAL 653 (Freeman Decorating Co.)

and Case 18-CB-3855

UFCW LOCAL 653 (Brede, Inc.)

and Case 18-CB-3883

DAN BRADY, An Individual

Joseph H. Bornong, of Minneapolis, MN,
appearing for the General Counsel.
Daniel P. Brady, of Mounds View, MN,
appearing *pro se* for the Charging Party.
Joseph B. Nierenberg (Fredrikson & Byron),
of Minneapolis, MN, appearing for Respondent-
Employers.

Roger A. Jensen and *Carol A. Baldwin (Peterson, Bell, Converse & Jensen)*, of St. Paul, MN, appearing for Respondent-Union.

DECISION

Statement of the Case

WILLIAM J. PANNIER III, Administrative Law Judge: I heard this case in Minneapolis, Minnesota, on February 22 through 24, and on April 5 through 8, 1999. On November 25, 1998, the Acting Regional Director for Region 18 of the National Labor Relations Board (the Board) issued three separate Orders Consolidating Cases and Consolidated Complaints: one based upon unfair labor practice charges in Case 18-CA-14810, filed on April 13, 1998, in Case 18-CA-14922, filed on July 16, 1998, and in Case 18-CA-14964, filed on August 18, 1998, alleging violations of Sections 8(a)(1) and (5) of the National Labor Relations Act (the Act); the second based upon unfair labor practice charges in Case 18-CA-14846, filed on May 5, 1998, and in Case 18-CA-14963, filed on August 18, 1998, alleging violations of Sections 8(a)(1), (2) and (5) of the Act; and, the third based upon unfair labor practice charges in Case 18-CB-3847, filed on May 26, 1998, in Case 18-CB-3855, filed on June 10 and amended on November 16, 1998, and in Case 18-CB-3883, filed on October 29, 1998, alleging violations of Sections 8(b)(1)(A) and (2) of the Act. By Order Further Consolidating Cases, also dated November 25, 1998, the Acting Regional Director consolidated the three Consolidated Complaints for hearing and decision.

Then, on January 28, 1999, the Regional Director for Region 18 issued a Complaint in Case 18-CA-15057, based upon an unfair labor practice charge filed on November 16, 1998, and amended on January 26, 1999, alleging violations of Section 8(a)(1) of the Act and, moreover, by Order Further Consolidating Cases, consolidated that case with the ones already consolidated for hearing and decision.

All parties have been afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, and to file briefs. Based upon the entire record, upon the briefs which have been filed, and upon my observation of the demeanor of the witnesses, I make the following findings of fact and conclusions of law.

I. The Alleged Unfair Labor Practices

A. Issues

The allegations of this case arise from two September 1995 representation elections conducted in two identically-worded and admittedly appropriate bargaining units, each among employees of a different exposition decorating employer. One of those employers is Brede, Inc., herein called Respondent Brede, a Minnesota corporation, with an office and place of business in Minneapolis, engaged in providing services, equipment and materials involved in setting up and dismantling trade show and convention exhibits.[1] The other employer is

[1] It is admitted that at all material times Respondent Brede has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, based upon the admitted factual allegations that, in conducting its above-described business operations during calendar year 1997, Respondent Brede purchased, and received in Minneapolis directly from suppliers located outside of the State of Minnesota, goods valued in excess of $50,000 and, during that

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Freeman Decorating Co., herein called Respondent Freeman, an Iowa corporation with an office and place of business in Des Moines, Iowa, where it engages in the manufacture, rental and installation of exhibits, decorations, booths and equipment for conventions and trade shows.[2]

Two unions appeared on the ballots for each of those two elections. One is a charging party in this proceeding: United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U, herein called Steelworkers 17U, an admitted labor organization within the meaning of Section 2(5) of the Act. The other had ostensibly been the incumbent bargaining agent of the employees involved in the elections. It is United Food & Commercial Workers International Union, Local No. 653, AFL-CIO, herein called Respondent UFCW 653, also an admitted labor organization within the meaning of Section 2(5) of the Act.

Both elections were won by Steelworkers 17U. On September 18, 1995, the Regional Director for Region 18 issued Certifications of Representative to Steelworkers 17U as the exclusive collective-bargaining representative of employees in separate appropriate bargaining units, one for employees of Respondent Brede and the other for employees of Respondent Freeman. Each of the certified appropriate bargaining units is worded:

> All on-call, casual, extra employees employed by the Employer as journeypersons or helpers during at least two shows, exhibitions, and/or conventions at facilities located in the Minneapolis-St. Paul, MN metropolitan area for at least five working days during the past twelve months or who have been employed by the Employer at such events for at least 15 days within the past two years; excluding office clerical employees, professional employees, managerial employees, all other employees currently covered by other collective bargaining agreements, and guards and supervisors as defined in the National Labor Relations Act, as amended.

Importantly, those twin units were not determined by a pre-election decision. Instead, they were ones agreed upon by the parties in separate Stipulated Election Agreements, one agreed to by Steelworkers 17U and Respondents Brede and UFCW 653 in Case 18-RC-15804; the other by Steelworkers 17U and Respondents Freeman and UFCW 653 in Case 18-RC-15803.

One aspect of those stipulated bargaining units soon arose to cause difficulty in application. That is the exclusion of “all other employees currently covered by other collective bargaining agreements”. Prior to the Stipulated Election Agreements, Respondent Brede had been party to collective-bargaining contracts with Respondent UFCW 653. Respondent Brede also contends that it had been party to collective-bargaining contracts with International Alliance of Theatrical Stage Employees, Local 13, Minneapolis, Mn., herein called Stagehands, and, as well, with Teamsters Local No. 544, herein called Teamsters.

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same calendar year, sold goods and/or services valued in excess of $50,000 directly to customers located outside of Minnesota.

[2] It is admitted that at all material times Respondent Freeman has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, based upon the admitted factual allegations that, in the course of conducting its above-described business operations during calendar year 1997, Respondent Freeman purchased, and received at Des Moines directly from suppliers located outside of the State of Iowa, goods valued in excess of $50,000 and, during that same calendar year, sold goods and/or services valued in excess of $50,000 directly to customers located outside of Iowa.

Litigated in a proceeding conducted before Administrative Law Judge John H. West on March 17 through 20, 1998, were issues of whether Respondent Brede had actually been party to contracts with those two unions; whether Respondent Brede had violated the Act by, in effect, funneling off the work of Steelworkers 17U-represented employees to employees represented by Respondent UFCW 653, to Stagehands and to Teamsters; and, whether Respondent Brede had violated the Act by granting recognition to Respondent UFCW 653 and by entering into, maintaining and enforcing a partial collective-bargaining contract with Respondent UFCW 653 as the representative of "on-call, casual, extra employees" encompassed by the Certification of Representative issued to Steelworkers 17U. In addition, it was alleged and litigated in that proceeding that Respondent UFCW 653 had violated the Act by certain aspects of its referral (dispatching) procedure and by failing to properly refer certain employees, among whom were Charging Party Daniel P. Brady, from about June 2, 1996 through about July 27, 1997.

In a Decision issued on August 14, 1998 (JD-123-98), Judge West concluded that Respondents Brede and UFCW 653 had violated the Act as alleged. Two points must be made about that Decision, insofar as its findings and conclusions pertain to the instant proceeding. First, that Decision is presently before the Board for review on exceptions. Accordingly, its findings and conclusions are not those of the Board and cannot be relied upon as the basis for any conclusion in this proceeding.[3] Still, the General Counsel acknowledges that all of the allegations in this proceeding against Respondent Brede, and some of the allegations against Respondent UFCW 653, are based upon an assumption that certain conclusions reached by Judge West will be affirmed. Therefore, based upon the general principle that it is presumed that a government official has properly performed his/her duties, I shall assume, for purposes of those allegations in this proceeding, that Judge West's related underlying conclusions will be affirmed. Of course, should that not be the fact, allegations arising from them in this proceeding should be dismissed.

Second, in the course of developing background evidence in this proceeding, Respondents Brede and UFCW 653 presented certain evidence which, in retrospect, concern aspects of Judge West's factual and conclusionary findings. I consider that evidence in this proceeding only to the extent that it bears on issues presented by the now-consolidated above-captioned cases. I will not rely upon that evidence for, in effect, reconsideration of the findings of fact and conclusions reached by Judge West. Respondents Brede and UFCW 653 had their opportunity to present evidence regarding the issues resolved by Judge West. So far as the record in this proceeding discloses, neither of those respondents has moved to reopen the record in the earlier proceeding, pursuant to Board's Rules and Regulations, Section 102.48(d)(1). See, *Grinnell Fire Protection Systems*, 307 NLRB 1452 fn. 2 (1992). Obviously, it would be improper for me to reconsider conclusions reached in an earlier proceeding, while that proceeding is before the Board for review and given that I was not involved in that proceeding.

The allegations made in this proceeding against Respondents Brede and UFCW 653 arise from events occurring after the hearing conducted before Judge West. It is alleged, and admitted by Respondent Brede, that since April 11, 1998, Steelworkers 17U has requested bargaining about employment terms and conditions of "on-call, casual, extra employees" referred to Respondent Brede by Stagehands and, further, that since April 23, 1998, Respondent Brede has refused to negotiate about the employment terms and conditions of

[3] Indeed, only recently the Board has pointed out that portions of administrative law judges' decisions to which no exceptions have been filed, and for which no Board-review has been conducted, are "of no precedental value." *Watsonville Register Pajaronian*, 327 NLRB No. 160, slip op. at 3 (March 24, 1999).

those employees. In short, Respondent Brede denies that it has violated the Act by that refusal because those Stagehands-referred "on-call, casual, extra employees" were, and are, "covered by [another] collective bargaining agreement[ ]" and, thus, are excluded from Steelworkers 17U's certified bargaining unit.

Both Respondent Brede and Respondent UFCW 653 are alleged to have violated the Act when, during May 1998, the latter requested recognition as the exclusive collective-bargaining representative of "on-call, casual, extra employees" employed by the former. It is further alleged that Respondent Brede unlawfully granted that request and that Respondent UFCW 653 unlawfully accepted recognition, with the parties then unlawfully conducting negotiations concerning employment terms and conditions of those employees. In the process, it also is alleged, Respondent Brede unlawfully withdrew recognition of Steelworkers 17U as the collective-bargaining representative of "on-call, casual, extra employees" employed by Respondent Brede.

The foregoing allegations, as pointed out above, are based upon affirmance of Judge West's conclusions in the prior proceeding. Independent of his Decision, it is alleged that Respondent UFCW 653 violated Section 8(b)(1)(A) of the Act when its admitted statutory agents, Business Agent Warren Hartman and Steward Kevin Sabas, told employees that they had to join Respondent UFCW 653 or they would not be able to work for Respondent Freeman.[4] In addition, independent of any finding or conclusion made by Judge West, it is alleged that Respondent UFCW 653 violated Sections 8(b)(1)(A) and (2) of the Act since May of 1998 by failing and refusing to refer Brady, a member and leading supporter of Steelworkers 17U, to employment in Minneapolis with Excel Decorators, Inc., herein called Excel, an Indiana corporation with an office and place of business in Indianapolis, Indiana, where it engages in the production of trade show and convention decorating services.[5] It is further alleged that Respondent UFCW 653 failed and refused to refer Brady to employment with Excel because of Brady's membership and support for Steelworkers 17U.

Respondent UFCW 653 denies that it committed any of the foregoing alleged unfair labor practices. In addition, it contends that the allegations against it are barred by the six-month limitation proviso of Section 10(b) of the Act. But, there is no basis for reaching such a conclusion with regard to any of the allegations made against Respondent UFCW 653 and, in fact, it has not pointed to any specific allegation barred by that proviso, in light of the dates of the charges against it and the evidence presented.

Respondent Freeman was not named as a respondent and did not appear by counsel in the proceeding before Judge West. For the most part, it is alleged in this proceeding that since October 13, 1997, Respondent Freeman disregarded its statutory obligation to honor collective-bargaining contracts with Steelworkers Local 17U, and its statutory obligation to deal only with that labor organization as the exclusive collective-bargaining representative of Respondent

[4] No allegation against Respondent Freeman is made in connection with those alleged threats.

[5] It is admitted that at all material times Excel has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, based upon the admitted factual allegations that, in the course of the above-described business operations during its fiscal year ending May 31, 1998, Excel purchased, and received at Indianapolis directly from suppliers located outside of the State of Indiana, goods valued in excess of $50,000 and, during that same fiscal year, sold and shipped from Indiana, directly to customers located outside of that state, goods and/or services valued in excess of $50,000.

Freeman's "on call, casual, extra employees," by hiring those employees from sources other than Steelworkers 17U, specifically Respondent UFCW 653, and, then, by recognizing Respondent UFCW 653 as the bargaining representative of those employees and by applying to them employment terms and conditions inconsistent with those specified in Respondent Freeman's collective-bargaining contracts with Steelworkers 17U.

Actually, Respondent Freeman admits those factual allegations. It argues that it acted lawfully, however, inasmuch as those actions were taken pursuant to the certification's "all other employees currently covered by other collective bargaining agreements" exclusion. Thus, it contends, Steelworkers Local 17U had no statutory right to prevent it from continuing to obtain "on-call, casual, extra employees" from Respondent UFCW 653, as it had been doing prior to September of 1995, and from applying to those employees whatever employment terms and conditions were specified in its collective-bargaining contracts with Respondent UFCW 653.

Independently of its bargaining relationships with Steelworkers 17U and with Respondent UFCW 653, Respondent Freeman is alleged to have violated Section 8(a)(1) of the Act on November 3, 1998, because its Des Moines Operations General Manager James Lowell Zaugg, an admitted statutory supervisor and agent of Respondent Freeman, assertedly threatened to reduce Minneapolis-area work activity of Respondent Freeman, thereby depriving "on-call, casual, extra employees" there of work opportunities, unless unfair labor practice charges against it, including some of those involved in the instant proceeding, were withdrawn by Steelworkers 17U and by Brady.

B. Background

A review of certain background subjects is necessary to better evaluate facts underlying the issues presented for resolution. As must be obvious from the descriptions of employers' operations set forth in subsection A above, this case arises in the exposition decorating industry: the business of setting up and, later, dismantling exhibits for trade shows, exhibitions and conventions. To set one up, a blueprint of the layout is prepared. Based upon that blueprint, a load list is prepared, enumerating the equipment, prefabricated displays and other material which must be trucked to the show, exhibition or convention site. At that site, the floor or ground is marked to show where exhibits will be placed. Then installed are electrical wiring and plumbing which is needed. Padding and, on that, carpeting is laid and taped down. Plastics are placed over the carpeting and display bases are installed. Then displays are erected.

Displays range in size from booths to more elaborate ones, such as turntable-displays for automotive shows. Once displays have been erected, electrical and plumbing connections are made. What is known as "masking" is performed: pipe and frames are set up and from the cross-pipes are hung 12- to 20-foot drapes. Soft goods may be hung from batons which, in turn, are hung from the convention hall ceiling or from trusses rigged on that ceiling. Furniture and fixtures are placed on the displays, perhaps with signs and/or banners affixed to displays.

With the exception of very large or unusual ones – such as the Smithsonian Show which ran from late September to late November of 1996 – shows last only a few days. Once shows are completed, exhibits are disassembled, and the furnishings, equipment and whatever materials can be reused are packed and trucked to warehouses for future use.

As might be expected, work on any given show is relatively short in duration. A number of employees are needed to assemble shows and a similar number is needed to disassemble them. During shows, a more limited number of employees is needed, to perform whatever work

may be required while shows, conventions and fairs are in progress. The numbers of those employees are determined about the same time as the load lists are prepared. Based upon those determinations, prepared are work tickets which specify what work those employees will be performing.

In many areas of the country, all exposition decorating employees are supplied to that industry's employers by a single union which represents all exposition decorating employees in that particular area. In the Minneapolis-St. Paul metropolitan area, however, several unions represent employees who perform exposition decorating work. Three of those unions are Respondent UFCW 653, Stagehands and Teamsters. Thus, for any given Minneapolis-St. Paul metropolitan area show, exhibition or convention, the exposition decorating employer would contact one or more of those unions for referral of needed numbers of employees for assembly and disassembly.

In many, perhaps most, instances a given Minneapolis-St. Paul employee is on the referral list of more than one union. While working on any particular show, exhibition or convention, that employee is regarded as represented by the union which referred him/her there. Concomitantly, that employee's employment terms and conditions are governed by the collective-bargaining contract between the employer and the particular union which referred that employee. For example, an employee could be regarded as represented by Respondent UFCW 653 for one show, exposition or convention and, then, by Teamsters for the next one.

As with the unions, a number of employers are engaged in the decorating exposition industry in the Minneapolis-St. Paul metropolitan area. Two of them are Respondents Brede and Freeman. Respondent Brede's headquarters are not there, but it does maintain one of its six regional offices in Minneapolis, mentioned in subsection A above. During what may be regarded as the convention season Respondent Brede conducts relatively ongoing convention decorating activities – producing or being service contractor for a series of shows, expositions and conventions in the Minneapolis-St. Paul metropolitan area. Its president/general manager for the last six years has been William C. Casey III, an admitted statutory supervisor and agent of Respondent Brede.

Reporting to him in the Minneapolis regional office is an administrative manager, a sales manager and Operations Manager Mike Johnson. The latter is also an admitted statutory supervisor and agent of Respondent Brede. According to Casey, Johnson "sets up the day to day work schedule for our [Minneapolis] office and oversees basically all aspects of operation including who works and making the labor calls and stuff like that."

Respondent Freeman has branch offices in several locations throughout the country, including one in Chicago, Illinois, and another in Des Moines. Personnel in each of those branch offices is responsible for producing and acting as service contractor for shows, expositions and conventions in a particular geographic area. As Respondent Freeman has no office in the Minneapolis-St. Paul metropolitan area, its Des Moines office acts as producer/service contractor for shows, expositions and conventions there.

In contrast to Respondent Brede, Respondent Freeman does not have relatively ongoing exposition decorating business in the Minneapolis-St. Paul metropolitan area. During calendar year 1995, for example, it produced/was service contractor for 14 shows there, employing personnel on them for a total of only 87 days. During calendar year 1996, Respondent Freeman had a total of nine shows in that area, one of which was the Smithsonian Show, employing employees for a total of 96 days during that year. It was producer/service contractor

for 12 Minneapolis-St. Paul shows during 1997, employing employees on them a total of 51 days.

During 1998 Respondent Freeman was producer/service contractor for 11 Minneapolis-St. Paul metropolitan area shows and conventions, employing employees there for 72 total days. More specifically, inasmuch as some of those shows were the sites of some alleged unfair labor practices, during 1998 Respondent Freeman was producer/service contractor for, and employed employees on, the AARP Show from May 26 through June 6, the Human Resources Management Show from June 10 through 18, the RESNA Show from June 25 through 30, the Microsoft Developer Days Show on August 1 and 2, the Lumbermen's Show from September 15 through 20, and the Shakopee Crafts Show from October 27 through 29, and on November 2.

There seems no dispute about the fact the Respondent Freeman had been producer/service contractor for all of the shows listed in the immediately preceding paragraph. But, it is uncontested that Respondent Freeman only acts as the direct producer/service contractor for about half of the shows for which it contracts in the Minneapolis-St. Paul metropolitan area. For the other half Respondent Freeman subcontracts the work to Respondent Brede which, in turn, supplies the exposition decorating employees for those shows, expositions and conventions. Although the record does not contain a precise list of those shows, that does not affect the unfair labor practice allegations, since precise determinations can be made during the compliance phase of this proceeding, if necessary. See, e.g., *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883 (1984) and *McKenzie Engineering Co. v. NLRB*, __F.3d___, 161 LRRM 2641, 2645 (8th Cir. 1999).

Focusing on Minneapolis-St. Paul metropolitan area shows for which Respondent Freeman is producer/service contractor, the highest ranking Des Moines Branch official is General Manager Zaugg. He testified generally that he is "responsible for anything that happens in the Des Moines operation," answering to Respondent Freeman's regional vice-president. That had been James Nork, Sr. Until January 31, 1999, and has been Dale Morris, since then. Reporting directly to Zaugg in the Des Moines Branch Office, he testified, are the director of sales, Larry Stoddard by the time of the hearing, and possibly also, though this is not altogether clear, the operations manager, Ray Pinegar by the time of the hearing. Reporting to the director of sales are the four Des Moines Branch account executives, one of whom is Stoddard. He had been elevated to the position of director of sales from the position of account executive. Nonetheless, he continues to perform the duties of account executive.

It is the account executives who have direct responsibility for production and servicing shows, expositions and conventions for Respondent Freeman. "They all deal with accounts that are assigned to them," testified Zaugg, meaning that they "[w]ork with the association or group [Respondent Freeman is] going to be producing the show for." According to him, it is the account executives who "produce the [above-mentioned] work tickets" for shows, expositions and conventions, to ensure "that the workers will know exactly what they are to do," and, moreover, it is the account executives who secure employees from a union or from unions, based upon the account executives' determination as to how many employees will be needed. Zaugg further testified that, while on site, the account executive is the highest-ranking official there for Respondent Freeman – save, of course, for whenever Zaugg or his superior happen to be there.

Reporting to the account executive on site is a general foreman or senior foreman. Zaugg utilized one or the other title, seemingly interchangeably, when referring to Ray Pinegar who occupied that position before becoming operations manager, as well as when referring to

other individuals who have been general or senior foremen. It is that official, according to Zaugg, who receives the above-mentioned work tickets and "run[s] the job at the site," to set up and later disassemble exhibits. Among other decisions, it is the general or senior foreman who is responsible for completing the payroll, for determining when work stops for the day, and for deciding when employees can leave work early. "His decision," testified Zaugg.

The foregoing description of duties is not simply some idle recitation of facts. As will be seen in subsection F below, Stoddard and Pinegar were assigned relatively central roles by Business Agent Hartman in connection with events at the AARP Show from May 26 through June 6, 1998 – events which supposedly led Respondent Freeman to disregard any effort to secure referrals of "on-call, casual, extra employees" from Steelworkers 17U for the ensuing Human Resources Management Show of June 10 through 18, 1998, and, instead, to secure those employees from Respondent UFCW 653. Yet, neither Stoddard nor Pinegar was called as a witness in this proceeding. There is no evidence that either official had not been available to appear as a witness. Nor was there any representation to that effect. Their non-appearance is left unexplained.

As pointed out above, work in the exposition decorating industry is irregular. That is, decorating occurs only when shows, expositions and conventions are conducted. Accordingly, in a sense, all employees involved in that work might be regarded generally as "on-call, casual, extra employees" – as ones employed in the industry only whenever there is a show, exposition or convention to be produced. "There is no guarantee -- you know there is on [sic] guarantee there of 40 hours of work a week," explained Eugene Schultz, a Respondent UFCW 653 steward at Respondent Brede. At any given time, only one exposition decorating employer may be producing/service contracting a Minneapolis-St. Paul metropolitan area show, exposition or convention, while no other convention decorating employers are doing so. Concomitantly, only some exposition decorating employees may be working during a given period, while the others are left to look elsewhere for work.

Without delving too far into issues decided by Judge West, inasmuch as Respondent Brede maintains a facility in Minneapolis, and relatively regularly produces/service contracts shows, expositions and conventions in the Minneapolis-St. Paul metropolitan area, there is a group of exposition decorating employees which it employs as regular and full-time employees – ones referred to as the "core group". Thus, so long as there is convention decorating work to be performed by Respondent Brede, it employs as many of those employees as are needed. Whenever Respondent Brede has no work for some or all of its core group of regular and full-time decorating employees, those employees are free to seek, and do seek, temporary work with other employers in the convention decorating industry.

For most, if not all shows, Respondent Brede needs to augment its core group of decorating employees with additional employees, many times a number much greater than exists in the core group. Those additional employees are what have come to be referred to as the "on-call, casual, extra employees". During years immediately preceding September 1995 Respondent Brede, and Respondent Freeman, as well, obtained those employees mostly from Respondent UFCW 653, though they also were obtained from other sources including Stagehands and Teamsters. What is known as a "hall call" list was maintained under the auspices of Respondent UFCW 653. Employees asked to have their names placed on that list and they were referred to employment in the order of placement on that list. Thus, while there is sometime reference to the hall call list as a "seniority" list, that is not actually the fact.

By September 1995 the practice had developed of allowing employees who worked at least two days during a calendar month to remain on the hall call list, for referral during the

succeeding month, only if they paid a $15 per month fee. Failure to make that payment for each month in which he/she worked two or more days would result in deletion of that employee's name from the hall call list. To be reinstated on the list, an employee could resume paying the $15 monthly fee. But after a hiatus in that payment, the employee would not be restored to his/her original position on the list. Rather, he/she would be added at the bottom of the list's names.

There seems little, if any, dispute about the general fact that, at show sites, "on-call, casual, extra employees" perform the same types of work as Respondent Brede's regular and full-time employees. There was some generalized testimony, never really explained in depth, to the effect that there is a difference in skill level between the two groups. For example, Steward Schultz testified, "I would say, yeah, the work was similar but the extras obviously couldn't do what the full-time people did." Similarly, Respondent Freeman's General Manager Zaugg testified that the core group employees "are more qualified than" the, in effect, "on-call, casual, extra employees". But, the core group works for Respondent Brede and its President/General Manager Casey was not willing to indulge even that distinction between the two groups. Asked if the extras did work similar to that of, in effect, regular and full-time employees which Respondent Brede employed, Casey answered, "Not similar. Exactly the same."

Unlike Respondent Brede, Respondent Freeman does not employ any regular and full-time decorating employees in the Minneapolis-St. Paul metropolitan area. Of course, that is because its work in that area is only intermittent. And, as pointed out above, a significant amount of its convention decorating work there is subcontracted by Respondent Freeman to Respondent Brede. As a result, it may occasionally employ one or more of Respondent Brede's core group on shows, expositions and conventions which Respondent Freeman produces/service contracts itself. So far as the evidence discloses, however, that occurs only whenever Respondent Brede is not producing/service contracting a show and has no need to employ all of its core group of regular and full-time employees – in other words, whenever Respondent Brede does not have work for all of them and those core group employees are willing to take a temporary job until Respondent Brede next has work for them.

Finally, as must be implicit from some of what has been stated above, by September 1995 Respondent UFCW 653 had contractual relations with both Respondent Brede and Respondent Freeman. Contracts with both included mention of what would come to be called "on-call, casual, extra employees" and spelled out some employment terms and conditions for those employees. However, at least one of the officials of Respondent UFCW 653 made known that it was not truly the bargaining representative of "on-call, casual, extra employees".

Brady testified that he spoke with then-Business Agent August "Augie" William Zahn during 1995, after having been told by Steward Schultz that "possibly never" would "on-call, casual, extra" decorators be allowed to become members of Respondent UFCW 653, because "it would disrupt [Respondent UFCW 653's] negotiating power," given the much better contractual benefits being received by regular and full-time decorators. According to Brady, when he voiced his membership desire to Zahn, the latter "said flat out that that's not ever going to happen," adding that Respondent UFCW 653 "didn't represent the casual labor for Freeman or Brede in any way, shape or form" and that "as casual labor we are not part of [Respondent UFCW 653's] contract." Those remarks may seem rather unreal in view of the above-mentioned contractual provisions for "on-call, casual, extra employees". When later called as a witness for Respondent UFCW 653, however, Zahn never denied having participated in a conversation such as Brady had described. Nor, more importantly, did Zahn deny having made any of the above-quoted remarks attributed to him by Brady.

Those remarks, among others, led to the organizing campaign on behalf of Steelworkers 17U, to the Stipulated Election Agreements' agreed-upon appropriate bargaining units, and to certification of Steelworkers 17U as the representative, in separate units, of "on-call, casual, extra employees" of Respondents Brede and Freeman.

C. Unlawful Conduct Attributed to Respondent Brede

One of the alleged unfair labor practices attributed to Respondent Brede is that it had refused to bargain with Steelworkers 17U, since April 23, 1998, about employment of "on-call, casual, extra employees" referred by Stagehands and about the terms and conditions under which those employees worked for Respondent Brede. That allegation is rooted in Judge West's conclusion that since January 1, 1996, Respondent Brede had "substantially increased" its reliance on Stagehands as a source for "on-call, casual, extra employees," thereby funneling to Stagehands-represented employees work that otherwise would, and should, have been assigned to Steelworkers 17U-represented employees, by virtue of the certification. (JD at 46, 48, 59.) As pointed out in subsection A above, that is a conclusion which is being reviewed by the Board.

By letter to Respondent Brede's counsel, dated April 11, 1998, Steelworkers 17U's Chairperson Brady asserted, in pertinent part, that Steelworkers 17U "has acquiesced for use of stagehands at historical rates," but "is hoping to negotiate limits on stagehands use" because, "Stagehands are being used as extra employees and 17U represents all extras." The letter concludes with a request to "set up a meeting to negotiate rates for extra employees you get from all other sources." Of course, by the time of Brady's letter, Steelworkers 17U had been long certified as the exclusive collective-bargaining representative of "[a]ll on-call, casual, extra employees" employed by Respondent Brede.

Respondent Brede was not willing to accede to Brady's request. By letter to Brady dated April 23, 1998, Respondent Brede's counsel refused to engage in the negotiations requested by Steelworkers 17U. In the process, counsel set forth reasons which, in essence, are advanced by Respondent Freeman as a defense for most of the unlawful conduct attributed to it. So, it is worth quoting the April 23 letter at some length. In pertinent part, it states:

> The 1995 certification of Local 17U, USWA specifically excludes workers covered by other collective bargaining agreements. Individuals whom Brede hires with the assistance of [Stagehands] fall within that exclusion. Moreover, even if they did not, we do not believe that there is a community of interest shared by the Stagehands and the individuals whom Local 17U represents.
>
> Concerning Extra Helpers whom Brede employs "from all other sources," as described in the last paragraph of your April 11, 1998 letter, those Extras fall into two categories. Either they are covered by other collective bargaining agreements, in which case they are similar to Stagehands and do not fall within the group of employees whom Local 17U represents, or they are not covered by any other collective bargaining agreements and they otherwise come within the scope of the certification, should be represented by Local 17U (assuming that your union continues to enjoy the support of a majority of those employees).
>
> Brede will not agree to negotiate limits on the use of individuals who perform decorating work but who are not within the scope of Local 17U's representation. The conditions and procedures for the use of non-17U extras is a matter of long-standing past practice and management discretion. It is not a subject of mandatory bargaining between

> Brede and local 17U. If [sic] fact, it would be an unfair labor practice for Brede to negotiate with 17U over the terms and conditions of employment for employees represented by other unions.
>
> It may be necessary to clarify the fact that Local 17U represents only one portion of the total number of employees who perform decorating work of any type for Brede. Although your group became represented by Local 17U in 1995, that Union cannot bargain over the relationship between other employees and Brede.
>
> We agree that it is sometimes difficult to have several unions representing different employees who are engaged in similar or overlapping work. But at this particular time, that appears to be the situation with which we all must live.

Yet, the matter is not so straightforward as portrayed in this letter.

Respondent Brede denies the allegation that limits on its use of Stagehands-referred employees and their pay rates, while working for it, are mandatory subjects of bargaining. That might be a defensible position so long as, in fact, employees represented and referred by Stagehands were covered by a collective-bargaining contract on August 3, 1995, and so long as those referrals continued thereafter to be consistent with practice prior to that date. But, as pointed out above, Judge West concluded that, after January 1, 1996, Respondent Brede had "substantially increas[ed] its reliance" on Stagehands-referred "on-call, casual, extra employees" to perform convention decorating work.

Inherently, that increase undermined the representation of employees in the bargaining unit for which Steelworkers 17U had been certified as the exclusive collective-bargaining representative – deprived it of representation rights of the increased number of "on-call, casual, extra employees" being referred by Stagehands to Respondent Brede after January 1, 1996. Consequently, Steelworkers 17U had every statutory right to protect the full extent of its certified status, both by trying to negotiate limitation on diminution of it and, beyond that, to negotiate about employment terms and conditions, including wages, of "on-call, casual, extra employees" who had not been working pursuant to a contractual practice developed prior to August 3, 1995, the date of the Stipulated Election Agreement. Therefore, Brady's April 11, 1998 bargaining request was encompassed by Section 8(d) of the Act.

D. Unlawful Conduct Attributed to Respondents Brede and UFCW 653

As described in subsection A above, it is alleged that Respondent Brede violated Sections 8(a)(2) and (1) of the Act by granting recognition to Respondent UFCW 653 as the collective-bargaining representative of "on-call, casual, extra employees" being represented by Steelworkers 17U and, furthermore, violated Sections 8(a)(5) and (1) of the Act by withdrawing recognition from Steelworkers 17U as the certified exclusive collective-bargaining representative of those employees. It is alleged that Respondent UFCW 653 violated Section 8(b)(1)(A) of the Act by demanding and accepting that recognition. Again, those allegations are rooted in conclusions reached by Judge West.

In his August 14, 1998 Decision, Judge West concluded that Respondent Brede had made unlawful unilateral changes which adversely affected Steelworkers 17U's status as a certified collective-bargaining representative. Moreover, he concluded that Respondent Brede had unlawfully granted recognition to Respondent UFCW 653 and had unlawfully entered into and maintained a partial collective-bargaining contract with Respondent UFCW 653, covering employees in Steelworkers 17U's certified bargaining unit, at a time when Respondent UFCW

653 had not represented an uncoerced majority of Respondent Brede's "on-call, casual, extra employees". (JD at 59-60.) If those conclusions are upheld by the Board, two consequences follow from them. First, as of May 1998 there existed unremedied unfair labor practices affecting "on-call, casual, extra employees" of Respondent Brede. Second, the nature of those unfair labor practices was such that they naturally tended to cause employee-disaffection from the incumbent collective-bargaining representative, Steelworkers 17U. Thus, whatever facial majority status was achieved by Respondent UFCW 653 as of May 1998, it cannot be regarded as having been uncoerced in view of the unremedied unfair labor practices.

There is no dispute about the facts leading to the above-enumerated unfair labor practices allegations. Respondent UFCW 653's Business Agent Hartman testified that, during the Spring of 1997, "one of the people came to me and asked me if they could have some cards. They were interested in joining Local 653." During October of 1997 that employee, Richard Gustafson, returned the cards, each having been signed by an "on-call, casual, extra" employee. Between then and May of 1998, testified Hartman, additional cards were obtained from employees of Respondent Brede in that classification.

Those cards were submitted on May 11, 1998, to the Minnesota Bureau of Mediation Services, along with a card check agreement between Respondents Brede and UFCW 653. So far as the evidence shows, Steelworkers 17 U was never notified of those facts, nor offered an opportunity to participate in the State proceeding. Indeed, given the fact that the 1995 election among Respondent Brede's "on-call, casual, extra employees" had been conducted under the Act, neither Respondent Brede nor Respondent UFCW 653 explained why in 1998 those parties had chosen to take the cards to a state agency, rather than returning for another representation election conducted under the Act's procedures.

The General Counsel and Respondents Brede and UFCW 653 stipulated that the Bureau of Mediation Services conducted a count of the cards and, on May 12, 1998, issued a Unit Determination and Certification of Exclusive Representative to Respondent UFCW 653 as the "exclusive representative" of all employees in an appropriate unit of, "All extra helpers engaged in decorating work by [Respondent Brede], Minneapolis, Minnesota, and not covered by other collective bargaining agreements, including agreements with [Teamsters, Stagehands]; Local 880, I.B.P.A.T.; and [Respondent UFCW 653] for regular decorators; excluding all other employees."

Those same three parties further stipulated that, following issuance of the state certification, Respondent Brede recognized Respondent UFCW 653 "as the exclusive bargaining representative of its extra helpers," and the two parties then conducted bargaining sessions on June 2 and 16, 1998, though no agreement was reached on terms for a contract. Obviously, Steelworkers 17U was no longer being recognized by Respondent Brede as the bargaining agent of the latter's "on-call, casual, extra employees," though, so far as the evidence discloses, Respondent Brede never bothered to formally notify Steelworkers 17U of that fact. In that regard, apparently Respondents Brede and UFCW 653 were continuing to follow the course of not notifying Steelworkers 17U of what was happening in connection with the bargaining unit for which Steelworkers 17U had been certified by the Board as the bargaining representative – the same course as was being followed by those two respondents before the state certification proceedings.

After Judge West's Decision issued, however, Respondents Brede and UFCW 653 ceased negotiating, seemingly acknowledging the effect of Judge West's conclusions on the lawfulness of their ability to continue doing so. Employees who had signed Respondent UFCW 653's cards were notified of that cessation in negotiations.

E. Unlawful Conduct Attributed to Respondent UFCW 653

Independent of the events covered in the immediately preceding paragraph, it is alleged that Respondent UFCW 653 violated the Act in two respects. First, it is alleged that since about May 1, 1998, it has been failing and refusing to refer Brady to employment with Excel because of Brady's support for and activities on behalf of Steelworkers 17U, in violation of Sections 8)(b)(1)(A) and (2) of the Act. In connection with that ultimate allegation, Respondent UFCW 653 admits that, since before January 1, 1996, it had maintained an agreement or understanding with Excel requiring that Respondent UFCW 653 be the exclusive source of referrals of employees for decorating employment with Excel in the Minneapolis-St. Paul metropolitan area.

The evidence shows that Excel was producer/service contractor for two 1998 Minneapolis shows: the Strictly Business Computer Expo from Sunday, May 10 through Thursday May, 14; and the Tech Expo Show from Tuesday September 22 through Thursday, September 24. Excel needed eight decorators and a steward on May 10 and 11. According to Hartman, "the Tuesday [May 12] call went up to like about 40 is what it went up to." For the Tech Expo Show Excel sought 10 decorators for September 22, one for September 23 and 12 employees for the last day of that show on Thursday, September 24.

There is no dispute about the facts that Brady had been on Respondent UFCW 653's list of employees eligible for dispatch to both Excel shows and, moreover, that he was never dispatched to either of those shows. To properly understand what occurred in connection with those 1998 shows, four additional background matters need review or explanation.

First, as mentioned in subsection B above, for some years prior to September 1995 Respondent UFCW 653 had been conducting dispatch of what have come to be referred to as "on-call, casual, extra employees" through its hall call lists. As also pointed out in that same subsection, if an employee worked at least two days during a given calendar month, that employee could remain in the same position on the following month's hall call list only by paying a $15 fee. Failure to make that payment resulted in the non-paying employee's name being dropped from the hall call list.

Second, the hall call list for September 1995 listed Brady as "on-call, casual, extra" employee number 15. In light of Steelworkers 17U's campaign and the approaching representation elections, Brady elected not to pay his September 1995 hall call fee. So, he was dropped from the October 1995 hall call list. Moreover, he never paid that fee for any succeeding month. Nonetheless, it is uncontested that by 1998 Brady had notified Steward Sabas that he (Brady) wanted to be listed for referral through the hall call procedure. Further, it is not disputed that by 1998 Sabas had been listing Brady for dispatch to employers, such as Excel, for whose employees Steelworkers 17U was not the certified representative.

Third, Sabas took over the hall call list upon becoming Respondent UFCW 653's steward. In his Decision, Judge West concluded that Respondent UFCW 653 had violated the Act because Sabas began operating the hall call "without reference to objective standards or criteria," and, furthermore, because it refused to dispatch Brady from January 2, 1996 until July 22, 1997, because of Brady's alignment with Steelworkers 17U (JD at 60.) Of course, that Decision did not issue until after referral for the May 1998 Strictly Business Show. Still, the hearing in that case had occurred during March of 1998, before referrals were made to Excel for its May 1998 Strictly Business Show. Sabas had appeared as a witness during Judge West's hearing. Presumably, therefore, he appreciated before May 1998 that his prior non-referral of Brady was being challenged.

Fourth, on the September 1995 hall call list Brady's telephone number was listed as 783-7490. However, for reasons never explained, during that month he got a new telephone number, 780-3424, with "a US West voice messaging service," Brady testified, "installed at the same time" and answering at the same new telephone number.

Returning to Excel's work on the Strictly Business Show, from May 10 through 14, 1998, Sabas denied that he had intentionally not called Brady for work on that show. Examination of his testimony about supposed calls to Brady for that show, however, reveals that Sabas's testimony is not credible.

Both Hartman and Sabas testified that the former had telephonically notified the latter about Excel's call for the Strictly Business Show. Hartman testified that, during that telephone conversation, he had specifically instructed Sabas "to go down through the list by seniority and to make sure that Brady and [Steelworkers 17U-supporter Daniel] Mulligan were both called in their order on the list."[6] Sabas testified, "I was a little puzzled…because I didn't really understand why I was supposed to call the officer on another union to make a labor call for our union." Yet, seemingly that would have been obvious to Sabas, in light of his testimony two months earlier during a proceeding in which there had been litigation of then-allegedly unlawful refusals to refer by Respondent UFCW 653 of, *inter alia*, Brady.

Hartman conceded that Sabas "didn't like it at all" that Respondent UFCW 653 had to dispatch Brady and Mulligan to the Strictly Business Show: "both of them were officers of 17U, and [Sabas] didn't feel that he should have to call" either of them. "I told him no," Hartman testified, "We're going to get charges out of this if you don't call them. And he assured me that he would." Sabas agreed that he had been told by Hartman to "make sure" to call Brady "and any of the other affiliates with 17U." Even so, those accounts by Hartman and Sabas are evidence of the latter's reluctance to call Brady for referral and, moreover, that the lone reason for his reluctance had been Brady's status as an officer of Steelworkers 17U.

Sabas asserted that he had followed Hartman's instruction. He claimed that he "had been using the December [1995] list" – on which, as pointed out above, Brady's name did not appear – to make referrals prior to Excel's May 1998 call. Sabas had been adding names to that list after he had taken over the hall calling for Respondent UFCW 653. Among the names added to that list was that of Brady. Sabas further testified that, in addition to the December 1995 list, he also had been given the September 1995 hall call list, on which Brady's name appears as number 15, before the Excel call of May 1998. Written beside Brady's name on the September 1995 hall call list had been Brady's old telephone number, 783-7490, while beside Brady's name added to the December 1995 hall call list was Brady's newer, and still current by May of 1998, telephone number, 780-3424.

Sabas testified that, during the evening of Thursday, May 7, he began making calls for the Strictly Business Show and, in the process, that he had tried to call Brady, using "the September list because that tells me exactly where [Mulligan and Brady] should be" for referral. However, Sabas did not explain to which telephone number he had placed that asserted call. He merely testified that the phone just rang, without answer by human being or by answering machine.

[6] There is no allegation that Mulligan had been unlawfully denied dispatch to Excel, nor to any other employer.

Next day, according to Sabas, he again attempted to call Brady, from a pay phone while on break. Because he had failed to bring any list with him, Sabas testified that he had first called his home and had asked his son, who answered that call, to read off the telephone number from the list which purportedly had been left by Sabas's home phone. As it turned out, Sabas claimed, that had been the September 1995 list, on which appeared Brady's by-then discontinued 783-7490 telephone number. Sabas further testified that, at that time, he had not realized that he had been given the discontinued number by his son.

He testified that he twice had tried to call that number from the pay phone, but had gotten no answer to either call. So, testified Sabas, he called Hartman from the pay phone and reported that there was no answer when he had attempted to telephone Brady. Both Sabas and Hartman testified that the latter had said that he would try to telephone Brady and had asked Sabas for Brady's telephone number. Sabas testified that he read off to Hartman the number purportedly received from his son: the by-then long-discontinued 783-7490 telephone number. Hartman testified that he had tried to call that number, but had gotten no answer. Thus, Respondent UFCW 653's defense is simply that, through inadvertent confusion arising from Brady's telephone number change, no one had been able to reach Brady by telephone, though efforts had been made to do so, for referral to Excel's work on the Strictly Business Show. But, problems emerge when the testimony in support of that defense is examined more closely.

As pointed out above, Sabas testified eventually that he had placed his first call to Brady during the evening of Thursday, May 7, when he had "started making the labor call" for the Strictly Business Show. That would mean that his pay phone calls would have been made, under the account which he advanced when testifying, on Friday, May 8. In fact, Hartman claimed that he had received his call from Sabas, about not being able to reach Brady by telephone, "[t]he Friday before the show opened."

Their dating of those calls, however, was brought into question when the prehearing affidavit given by Sabas was produced. In pertinent part, it states:

> Mulligan is 14 on the September list, and Brady is 15. I don't think I got to them the first day I did calling for Excel. I had three journeymen, and I believe I got the other six needed to open before I got as far as Mulligan. Probably about Sunday May 10, though, I would have had to call some more to meet Excel's growing call. I called Mulligan…. Then I called Brady. Again, I got no answer and no answering machine. I called Mulligan again on May 13, and Brady right after again, no answer and no machine.

Comparison of that account with the above-described testimonial one of Sabas gives rise to a conclusion that there had been "evolving versions" over time in the defense being advanced by Sabas, similar to the "evolving versions" pointed to in *Arnold v. Groose*, 109 F.3d 1292, 1296 (8th Cir. 1997). See also, *Underwriters Laboratories, Inc. v. NLRB*, 147 F.3d 1048, 1053 (9th Cir. 1998).

In his affidavit, Sabas asserted that he had not reached Brady's name on the first day that he had made calls for the Strictly Business Show, and had not done so until the following Sunday, May 10. When he appeared as a witness, however, Sabas shifted from a defense of not having reached Brady's name on the list until that Sunday to a defense of having tried to call Brady on May 7 and 8, but not receiving an answer to those purported earlier calls. Simple mistake in dates? Not really.

Examination of the records of "on-call, casual, extra employees" who worked on the 1998 Strictly Business Show (part of General Counsel's Exhibit Number 4), when compared against the September 1995 hall call list, reveals that Marcia Sundin, employee 29 on September 1995 hiring list had worked the Strictly Business Show on Sunday, May 10. She continued working on that show during succeeding days. Clearly, had Sabas been following the September 1995 list as he began contacting employees for referral to that show, he had to have reached Brady's number 15 name on the list before Sunday, May 10. That exhibit, showing the names of "on-call, casual, extra employees" who had worked on the Strictly Business Show, had been offered and received into evidence prior to the day on which Sabas testified as a witness for Respondent UFCW 653. In the face of that exhibit, any effort by Sabas to pursue the defense which he had advanced in his affidavit – that he had not reached Brady's name on the September 1995 hall call list until Sunday, May 10 – would have been refuted already by what that exhibit disclosed.

That was not the only disparity between the testimony and affidavit accounts of Sabas. "Yeah," he answered, when asked if he had been told to be sure that everything was included in the affidavit about his asserted calls to Brady for Excel's May 1998 show. Yet, the affidavit makes no mention whatsoever of a supposed call to Hartman after Sabas's purported inability to reach Brady by telephone. To be sure, Hartman gave testimony which tends to corroborate the testimonial account advanced by Sabas. Yet, as will be seen below and in the following subsection, Hartman had his own credibility problems.

Appended to Sabas's affidavit, in addition to a copy of the September 1995 hall call list (on which Brady's newer telephone number has been handwritten), is a three-page typed list of "on-call, casual, extra employees" and, beside the name of each, their telephone numbers, followed by a fourth page of partially typed and handwritten names and telephone numbers, as well as a fifth page of handwritten names and telephone numbers. On the very first page Brady's name appears as the fifteenth typed name.[7] After Brady's name appears the typed telephone number "780-3424", the newer number which Brady acquired during latter 1995.

Sabas testified that the typed list "is the list that I attempted to type up" after the Strictly Business Show. In fact, Respondent UFCW 653 attempted to raise enough doubt about the timing of that list's preparation to negate any inference, it hoped, that the typed list had been prepared before Excel's Strictly Business Show. Two problems exist for that attempt.

First, in his affidavit, Sabas states, in pertinent part, "I am attaching a photocopy of the original September list. It has some notations on it like No#, not avbl; I'm not sure when I made those notations. I copied this before I did the Excel call, and retyped that, copy attached." (Underscoring supplied.) Consequently, even if Sabas had not actually "retyped" the list before the Strictly Business Show, he admittedly had "copied" the September 1995 hall call list before that show, according to his affidavit. Nothing in the record detracts from a conclusion that, in "copying" the September 1995 list, he had written down by Brady's name the newer of Brady's telephone numbers, as the typed list plainly discloses.

Second, there is one factor which strongly indicates, contrary to any attempt by Respondent UFCW 653 to make a contrary showing, that the typed list, in fact, had existed prior to the Strictly Business Show-call. Sabas acknowledged that handwritten in that typed list's left

[7] Handwritten at the top of that page is the name and telephone number of "Lee Johnson". There is no evidence as to when that name had been inserted at the top of that typed list of employees.

margin, beside Mulligan's and Brady's names, is "5/10 5/13 No Answer. No machine." Of course, those handwritten notations are consistent with the defense that Sabas had been advancing when he gave his affidavit. The important point for purposes of this part of analysis of Respondent UFCW 653's defense, however, is that Sabas advanced no explanation for why he might have later written those dates and words, had the typed list not truly been typed until after the Strictly Business Show. To that extent, those handwritten entries tend to support a conclusion that Sabas already had typed the list before having initiated calls for the Strictly Business Show. Therefore, the list from which he had been making those calls listed the then-current telephone number for Brady: 780-3424. That, then, leads to consideration of another factor which tends to further undermine the reliability of Sabas's testimony that he had actually tried to telephone Brady for referral to the Strictly Business Show.

If the typed list, or a handwritten list from which the typed list later had been prepared (as Sabas stated in his affidavit), had existed "before [Sabas] did the Excel call", then inexplicable is his assertion that he had left the September 1995 hall call list by his home telephone from which he had seemingly been making calls on Thursday evening, May 7. Having gone to the trouble of preparing, if not typing, an updated list, there would have been no point to leaving the old list by the phone, for his son to discover on Friday, May 8.

The reality is that Sabas's testimony, about a list to which his son might have referred for Brady's telephone number, is sheer speculation. Nothing in the record discloses any firsthand knowledge upon which Sabas could have based a reliable account of the list to which his son might have referred. And his son never appeared as a witness to supply an account based upon firsthand knowledge, though there is neither evidence nor representation that Sabas's son was not available to appear as a witness in this proceeding. Beyond that, Sabas made no mention whatsoever in his affidavit of having made any telephone call to his son, in a supposed effort to ascertain Brady's telephone number. That testimony by Sabas appears to be nothing more than an additional illustration of the "evolving versions" which he supplied, after the Excel employment list had been introduced, showing that on May 10 one employee below Brady on the September 1995 list had worked on the Strictly Business Show.

I do not credit the testimony given by Sabas in connection with Respondent UFCW 653's failure to refer Brady to Strictly Business Show. For his part, Brady denied that he ever had turned on and off his voice messaging service. As an objective matter, it seems unlikely that, as an officer and leading proponent of Steelworkers 17U, he would have done so. After all, turning off that machine, whether at home or not, would present a potential of not being able to receive calls from Steelworkers 17U's officials and from other "on-call, casual, extra employees" represented by that labor organization.

Hartman admitted that Sabas "didn't like" the idea of having to call "officers of 17U" for referral by Respondent UFCW 653. No question from the tenor of their testimony, while appearing as witnesses, that both Sabas and Hartman were hostile toward Steelworkers 17U's representation of employees whom Respondent UFCW 653 had been referring to decorating employers before September 1995. As seen in the preceding and following subsections, as well as below, Respondent UFCW 653 was making every effort, most unlawful, to recover control over referrals of those employees. Those factors amply support a conclusion that it harbored animus toward Brady, because of his involvement with and support for Steelworkers 17U, as well as because of his constant charge-filing whenever it appeared that statutory rights were being infringed, and were disposed to act upon that animus to disadvantage Brady. The evidence shows that, had normal referral procedure been followed, Brady should have been called for referral to the first day of the Strictly Business Show, a fact which Sabas effectively conceded when testifying. He was not called. Respondent UFCW has failed to credibly show

that Brady would not have been called, absent his support for Steelworkers 17U and the hostility of, at least, Sabas toward calling him based solely on Brady's support and activities for Steelworkers 17U.

A like conclusion is warranted with respect to Brady's failure to be called for and referred to Excel's Tech Expo Show during September 1998. Brady was number 16, in view of the insertion of Johnson's name at the top of Sabas's typed list, on Respondent UFCW 653's referral list for that show. Brady denied that he had been called to work the Tech Expo Show. Actually, Sabas never disputed that denial with any particularity. That is, Sabas never testified that he actually had even tried to call Brady for that show. Instead, the best that Sabas could muster was an assertion that he would have called Brady for the Tech Expo Show, had he reached Brady's name on the by-then admittedly existing typed list, with handwritten names and telephone numbers added.

Apparently seeking some plausible way out, Sabas pointed out that the Tech Expo call was "[p]retty small" and that it "stayed in the top dozen maybe. I don't think it got more than that." Of course, the Tech Expo call was not a large one, as set forth above. Yet, any defense based upon an implied, at best, assertion that Brady's name had not been reached, on the typed list, is obliterated by comparison of that list with the names of "on-call, casual, extra employees" who worked the Tech Expo Show. Cathy McEwan, James Robinson, Gregory Braun and Pete Allen all worked on that show. And all of their names appear below that of Brady on Sabas's typed list.

There is no showing that Sabas harbored any less animus toward Brady, as a Steelworkers 17U-supporter and -activist, during September 1998, than had been the admitted fact during the preceding May. By failing to contract Brady for referral during May, Sabas demonstrated his willingness to act upon that animus and to deprive Brady of calls for referral. Sabas never did advance any specific explanation for Brady's not having received a call for referral to the Tech Expo Show. Obviously, Brady should have received such a call in the ordinary course, since employees below him on the typed list were employed on that show, equally obviously as a result of referral by Sabas. A preponderance of the credible evidence supports the conclusion that Brady was not referred to both Excel 1998 shows for no reason other than his involvement with Steelworkers 17U and Respondent UFCW 653's animus toward him because of that involvement.

The second respect in which it is alleged that Respondent UFCW 653 independently violated Section 8(b)(1)(A) of the Act arises from assertedly unlawful remarks to "on-call, casual, extra employees" by both Hartman and Sabas. More specifically, it is alleged that both officials told employees that they had to join Respondent UFCW 653 or they would not be able to work in the future for Respondent Freeman.[8] The two shows directly involved in these allegations are Respondent Freeman's work at the AARP Show, from Tuesday May 26 through Saturday, June 6, 1998, and at the Human Resources Management Show from Wednesday, June 10 through Thursday, June 18, 1998. Five "on-call, casual, extra" decorating employees testified about remarks made by Hartman and Sabas.

Louis Ballweber testified that during the last two days of the AARP Show, "on the down," he had been "on break," going "to the back of the building to go out and have a cigarette," when he had been approached by Hartman who "asked me to sign a 653 card". According to

[8] There is no allegation that Respondent Freeman violated the Act in that connection with those statements to employees.

Ballweber, when he declined to do so, Hartman said "something like" signing the card "might be a good idea" inasmuch as "653 was going to be running the next Freeman show and if I didn't sign it I wouldn't work" that show, to which Ballweber replied, "Oh, I guess I won't work," and walked away. Similarly, Ballweber's sister, Theresa, testified that while working the AARP Show she had been approached by Hartman who "said he was going to be running the next Freeman show and he wanted to know if I wanted to work it," to which she responded affirmatively. Upon hearing her affirmative response, she testified, Hartman said that she would "need to sign a 653 card," and when she said that she would not do so, he had told her, "well, you should or you won't be working."

Brady corroborated Theresa Ballweber's testimony regarding what Hartman had said to her. Thus, he testified that "on Friday," as the employees "were tearing the AARP show out," he had heard Harman "ask Teresa [sic] if she wanted to work the next Freeman show," and telling her and Annette Richter, with whom Theresa Ballweber was standing, that "if they wanted to" work the next show of Respondent Freeman "they'd have to sign these 653 cards." Furthermore, Brady testified that, earlier that same day, he had overheard Hartman asking forklift operator Fred Grieffenhagen "if he wanted to work the next Freeman show which was just a week away for 653," after which he had observed Hartman "inside talking just from one person to another, going around and asking them questions". Those observations, testified Brady, led him to walk over and ask Hartman what he was doing. According to Brady, Hartman answered, "I'm getting people recruited for the next Freeman show which is next week," and added during their ensuing conversation, "Well, if you don't become a member [of Respondent UFCW 653] you can't work."

That Friday, presumably June 5, was not the only occasion on which Brady heard about Respondent Freeman resorting to Respondent UFCW 653 as the source of employees for the Human Resources Management Show – as, in fact, would be what happened, as described in the immediately following subsection. When he got home, seemingly on June 9, there was a message on his answering machine from Sabas, testified Brady. According to him, that message was, "Dan, I'm calling to see if you want to join Local 653 and we're starting the human resources show tomorrow if you want to work it."

Brady's was not the only testimony about telephone calls from Sabas. Jeff Belden testified that "Sabas called me," said that Respondent UFCW 653 would be running Respondent Freeman's Human Resources Management Show "and that if you go there as a 17U employee you would be turned away. Kicked out of the building." Belden asked Sabas why Respondent UFCW 653 was handling that show and, according to Belden, Sabas "just said that something happened at the AARP show and Freeman decided to give it to 653 at the last minute."

Belden further testified that he did report for work to the Human Resources Management Show. When he approached the sign-in table, he testified that seated there, among others, were Mike Fitzpatrick – identified only, by Hartman, "as one of [Respondent Freeman's] supervisors" from Chicago and, purportedly, a member of Steelworkers 17U – and Hartman. The latter, testified Belden, "was sitting over with the 653 cards." According to Belden, when he picked up a timecard, "Fitzpatrick took it away from me and said I couldn't fill it out until I filed papers or signed a card for 653." Belden testified that when "I asked, you know, what if I don't want to do it," Fitzpatrick retorted, "then you got to go home."

Belatedly produced during redirect of Belden was a "Membership Application" for Respondent UFCW 653 which bore the signature of "Jeffrey W. Belden" and the date "6 DAY 10 YR". Belden testified that he had received the card from Hartman on June 10, after being told by Fitzpatrick that a card had to be "filed" and after "similar" remarks were made by Hartman,

and that he then had filled out and signed the Application on June 10, 1998. As stated above, that had been the first day on which Respondent Freeman's "on-call, casual, extra employees" had worked on the Human Resources Management Show.

Belden was not the only employee told at that show that he had to fill out a "Membership Application" for Respondent UFCW 653 if he wanted to work the Human Resources Management Show for Respondent Freeman. Dan Gellerman testified that he had been called by Sabas who had "asked me if I could make it down there to work because they were short something 30 people," but that when he arrived one or more of the approximately six people at the sign-in table was/were "telling us that we had to fill out this card before we could work this job. Otherwise we would have to go home and not work at all so I filled out the card." In fact, a Respondent UFWC 653 Membership Application signed by Gellerman, and dated "6 MO. 16 DAY YR 98", was produced and Gellerman identified it as the one that he had completed and signed.

During cross-examination, various difficulties were highlighted in the individual accounts of each of the above-named employee-witnesses. For example, Gellerman placed Respondent Freeman's Des Moines Operations General Manager Zaugg as one of the people who had been at the sign-in table on June 16, but did not claim that Hartman had been there. Still, Zaugg appeared as a witness, but never denied having been present at the Human Resources Management Show's sign-in table on that date. Moreover, Hartman admitted that, during that show, "I was sitting at the table along with the show supervisor, who I think was Mike Fitzpatrick," and, further, allowed that he had "asked ["on-call, casual, extra employees"] if they'd like to sign up with Local 653." In fact, as set forth above, Belden placed Hartman "with the 653 cards" at the sign-in tables on June 10, 1998. Of course, Gellerman did not sign-in at the Human Resources Management Show until June 16, 1998, six days after Respondent Freeman had started working that show – apparently as a result of Respondent UFCW 653's above-mentioned difficulty locating 30 more employees for the show. Even so, Hartman never claimed that he had sat at the sign-in tables only on that show's first day. Indeed, it seems as reasonable that Hartman would "like to sign up" employees on later show-dates, as on the earlier ones.

Louis Ballweber gave internally contradictory accounts about whether Hartman had said that "653 was going to be running the next Freeman show," sometimes testifying that Hartman had said "Freeman," other times testifying that Hartman "didn't mention a name of a company." His sister described Hartman as having offered her "like a white index card" to sign, as opposed to the larger Membership Applications signed by Belden and Gellerman. In fact, her brother, Louis, also mentioned a "small card." Yet, they testified that they had been shown those cards on the floor of the AARP Show, as opposed to at the Human Resources Management Show sign-in tables. Respondent UFCW 653 presented no evidence that it has only one type of document that employees can sign: a Membership Application, as opposed to authorization cards. Thus, the fact that one had been used on some occasions is not inherently inconsistent with use of the other on different occasions.

The fact is that the foregoing employee accounts are sufficiently similar to be mutually corroborative as to what had been said by Sabas and Hartman. Hartman denied only generally having told employees anything about card- or membership application-signing being a requirement to work on Respondent Freeman's show. That is, he never denied with particularity any of the above-described specific remarks attributed to him. Nor did Hartman deny with particularity having been present when others, such as Fitzpatrick, told employees, such as Belden, that Respondent UFCW 653 documents – cards or membership applications – had to be signed in order to work for Respondent Freeman at the Human Resources Management

Show. Nor did Hartman deny with particularity having overheard remarks such as those attributed to Fitzpatrick.

For his part, Sabas admitted having called Brady, interestingly at the newer 780-3424 telephone number, for the Human Resources Management Show. Sabas admitted that he had not reached Brady, when placing that call, but had left a voice "message to contact me if he wanted to work." Sabas did not deny also having said, as part of that message, "I'm calling to see if you want to join Local 653". Moreover, Sabas conceded that he had called other employees for that show. He never disputed that Belden had been one of those other employees whom he had called about working the Human Resources Management Show. And Sabas never denied having told Belden "that if you go there as a 17U employee you would be turned away. Kicked out of the building." Consequently, undenied are those statements attributed to Sabas by Brady and Belden.

Also undenied effectively are the statements attributed to Hartman by the Ballwebers and by Brady. He acknowledged having asked employees "if they would want to sign up, or I wanted them to sign up" for Respondent UFCW 653. That tends to corroborate the above-quoted remarks attributed to him about having to sign-up to work the show. His above-described general and unparticularized denial will not suffice to put in issue specific accounts of statements attributed to him. For, such a general or "blanket" denial is insufficient to refute specific and detailed testimony, such as that provided by the Bellwebers and by Brady. *Williamson Memorial Hospital*, 284 NLRB 37, 39 (1987); *Beaird-Poulan Div., Emerson Elec. Co. v. NLRB*, 649 F.2d 589, 592 (8th Cir. 1981); *Mastercraft Casket Co. v. NLRB*, __F.2d___, 132 LRRM 2030 (8th Cir.1989).[9]

The employees who testified about what Hartman and Sabas had said appeared to be testifying candidly. Their descriptions of what had been said by those two officials tend to be mutually corroborative. Sabas never denied having made the remarks attributed to him by Belden and Brady. Hartman never effectively denied the statements attributed to him by the Ballwebers and Brady. In fact, by the time of Respondent Freeman's work at the Human Resources Management Show, Respondent UFCW already had received state certification as the representative of Respondent Brede's "on-call, casual, extra employees," as discussed in subsection D above, and Hartman acknowledged that, by June 2, "if things worked like we hoped they were going to work that we may be doing it for Freeman too." Of course, authorization cards and membership applications were the means for implementing that desire – the means for setting in motion state proceedings identical to those used to secure representation for Respondent Brede's "on-call, casual, extra employees". Therefore, I conclude that a preponderance of the credible evidence supports the factual allegation that Hartman and Sabas had told employees that they had to join Respondent UFCW 653, or at least designate it as their bargaining agent, to be able to work on Respondent Freeman's June Human Resources Management Show.

[9] Hartman's situation is not improved by his assertion that he "knew that I was in big trouble if I told [employees] they had to sign up to work," in light of the holding of *Communications Workers v. Beck*, 487 U.S. 735 (1988). Such testimony, shorn of all other considerations, really is an appeal to character and "is not admissible for the purpose of proving action in conformity therewith on a particular occasion," Fed.R.Evid. Rule 404(a). Beyond that, prisons and jails are filled with people who knew that doing what they did, that ended them up there, would get them in "big trouble" – but they followed a course of, as the song goes, "catch us if you can," without regard to the trouble they knew would follow if they were caught.

F. Unlawful Bargaining-related Conduct Attributed to Respondent Freeman

Following issuance of the Certifications of Representative on September 18, 1995, Respondent Freeman negotiated with Steelworkers 17U and eventually agreement was reached on terms for a collective-bargaining contract. That contract was signed in October of 1997; it was a one-year contract effective from July 8, 1997 through July 7, 1998.[10] The bargaining unit described in that contract corresponds to the one for which Steelworkers 17U had been certified, as quoted in subsection A above. Some additional terms of that contract are significant in view of the events at issue and arguments advanced.

Article I, Section 3 obliged Respondent Freeman "when additional Employees are required [to] call upon the Union to furnish such competent Employees, satisfactory to the Employer who have worked for other employers on similar work," but should Steelworkers 17U not be able to "meet all Employer requirements….the Employer shall be entitled to obtain labor to complete the call from other sources of the Employer's choosing." However, nothing in the contract constitutes a waiver of the certification and contract's application to employees obtained "from other sources" than Steelworkers 17U. In other words, regardless of by whom referred, "[a]ll on-call, casual, extra employees" working for Respondent Freeman in the Minneapolis-St. Paul metropolitan area would be represented by Steelworkers 17U, save to the extent excluded by the certification, and, moreover, their employment terms and conditions would be governed by collective-bargaining contracts between those parties.

Relatedly, Article XV, Section 1, subsection h allows Respondent Freeman, "To subcontract all or part of trade show contracts within the Metropolitan area of Minneapolis/St. Paul to any union trade show contractor." As pointed out in subsection B above, Respondent Freeman historically had subcontracted to Respondent Brede exposition decorating work in that metropolitan area. The quoted subsection allowed Respondent Freeman to continue doing so.[11] Articles XII and XIII set forth a disputes resolution procedure, culminating in arbitration.

As set for in subsection A above, it is alleged that, on multiple occasions since October 13, 1997, Respondent Freeman has, in essence, disregarded its contractual obligations, as well as Steelworkers 17U's status as certified bargaining representative, by obtaining "on-call, casual, extra employees" from sources other than Steelworkers 17U, without first seeking those employees Steelworkers 17U, and has applied to those employees terms and conditions of employment inconsistent with those specified in the contract between Respondent Freeman and Steelworkers 17U. In support of that generalized allegation, several factual allegations are made.

As a result of amendment during the hearing, it now is alleged that, "Since on or about October 13, 1997, Respondent [Freeman] has hired at least eight unit employees, John Barrett, Dan Phillips, Lenny Prouty, Steve Carlson, Rip Fisher, Tom White, Brad Anderson, Michael Lindholm, and perhaps other unknown at this time from sources other than" Steelworkers 17U

[10] Thus, it was the contract in effect when Respondent Freeman was producer/service contractor for the AARP Show from May 26 through June 6, 1998, and for the Human Resources Management Show from June 10 through 18, 1998.

[11] When that occurred, of course, "on-call, casual, extra employees" working on those shows would be employees of Respondent Brede and, thus, would be covered by the Certification of Representative issued for Respondent Brede and, concomitantly, would be subject to the bargaining relationship between it and Steelworkers 17U, as opposed to the bargaining relationship between Respondent Freeman and Steelworkers 17U.

and, to those employees, applied employment terms and conditions inconsistent with those in Respondent Freeman's 1997-1998 contract with Steelworkers 17U. It further is alleged, as also amended at hearing, that, "In April and May 1998, and at other times continuing to date, Respondent [Freeman] hired a large number of ["on-call, casual, extra"] employees whose identities are not known…from sources other than" Steelworkers 17U. Finally, it is alleged that, "In June 1998, and at other times continuing to date, Respondent [Freeman] hired a large number of ["on-call, casual extra"] employees whose identities are not known…from sources other than" Steelworkers 17U and, moreover, to those employees applied employment terms and conditions inconsistent with Respondent Freeman's collective-bargaining contract with Steelworkers 17U.

Respondent Freeman admits all of the factual allegations, as quoted in the immediately preceding paragraph. However, it denies the ultimate allegation that, by admittedly having engaged in that conduct, it violated Sections 8(a)(5) and (1) of the Act. It denies, as well, the penultimate allegation that the subjects of employment terms and conditions for employees hired from sources other than Steelworkers 17U are mandatory subjects for the purposes of collective bargaining, within the meaning of Section 8(d) of the Act. In addition, Respondent Freeman denies that it violated the Act by having hired and employed those "on-call, casual, extra employees," obtained from sources other than Steelworkers 17U, without prior notice to that labor organization and without affording it an opportunity to bargain about their hiring and employment terms and conditions. However, Respondent Freeman does not dispute the facts that it had not notified Steelworkers 17U that it (Respondent Freeman) was hiring "on-call, casual, extra employees" from sources other than that labor organization, nor that it applied to those employees, hired from sources other than Steelworkers 17U, employment terms and conditions other than those specified in its contract with Steelworkers 17U. In support of those denials, Respondent Freeman advanced during the hearing pretty much the same argument as is set forth in counsel's April 23, 1998 letter on behalf of Respondent Brede, as quoted in subsection C above – that is, there was no bargaining obligation because of the unit exclusion of "all other employees currently covered by other collective bargaining agreements".

Before addressing the facts underlying that defense, however, some attention should be directed to facts supporting the above-quoted admitted factual allegations so that, as with stipulated factual allegations, there is a better "picture of the events relied upon." *Old Chief v. United States*, __U.S.___, ___, 117 S.Ct. 644, 653 (1997). On brief, the General Counsel points to records of several Respondent Freeman Minneapolis shows during 1998 when Respondent Freeman had obtained "on-call, casual, extra employees" from sources other than Steelworkers 17U: the RESNA Show from June 25 through 30, the Microsoft Developers Days Show of August 1 and 2, the Lumbermen's Show of September 15 through 20, and the Shakopee Crafts Show of October 27 through 29 and on November 2. Without going to the extreme of flogging the dead horse of that which has already been admitted, however, events concerning only one show serve to give a better picture of those admitted factual allegations.

That show is the Human Resources Management one of Wednesday, June 10 through Thursday, June 18, 1998. In connection with referral and non-application of the contract with Steelworkers 17U to that show, it also is necessary to review some related events which occurred during the earlier AARP show of Tuesday May 26 though Saturday, June 6, 1998. Indeed, some related events have already been covered in subsection E above: the statements by Hartman and by Sabas about employees being able to work on the Human Resources Management Show only by becoming members of Respondent UFCW 653 or, at least, by signing authorization cards designating it as the bargaining representative for "on-call, casual, extra employees" who would be working the Human Resources Management Show for Respondent Freeman.

For both the AARP and Human Resources Management shows Respondent Freeman had, itself, been producer/service contractor – that is, had not subcontracted production/service contracting for either of them. Its Des Moines Operations General Manager Zaugg admitted that, rather than contacting Steelworkers 17U for "on-call, casual, extra employees", Respondent Freeman had contacted Respondent UFCW 653 to obtain those employees for the Human Resources Management Show. Moreover, rather than recognizing Steelworkers 17U as the collective-bargaining representative for those employees working on that show, and rather than applying the employment terms specified in its contract with Steelworkers 17U, Respondent Freeman recognized Respondent UFCW 653 as the collective-bargaining representative of "on-call, casual, extra employees" working on the Human Resources Management Show and, further, applied to those employees terms and conditions of employment in force with Respondent UFCW 653.

Neither Zaugg nor any other official of Respondent Freeman made any effort to explain why that course of action was chosen and pursued for the Human Resources Management Show. The only witness who attempted to do so was Business Agent Hartman who hardly can be characterized as someone possessing firsthand knowledge of reasons for managerial decisions made by Respondent Freeman's officials. Moreover, all that his explanation revealed, in the final analysis, is that his testimony cannot be accorded any reliance.

He claimed that, on a Friday, he had gone to the AARP Show site, arriving, "I suppose around 3:00, 2:30, 3:00," to distribute a meeting notice to "on-call, casual, extra employees" being represented by Respondent UFCW 653, in connection with Respondent "Brede's contract proposals," presumably for the negotiations resulting from the state certification described in subsection D above. Of course, the AARP Show was not being produced/service contracted by Respondent Brede. However, Hartman claimed that Respondent UFCW 653-represented employees were working there, though he never identified any. Still, as pointed out in subsection B above, most Minneapolis-St. Paul metropolitan area "on-call, casual, extra employees" have signed for referral with more than one union.

Once at that site, testified Hartman, two events supposedly occurred. First, he testified that he had observed Brady handing out paychecks to employees who were then leaving work for the day, even though "the call was until 10:30 at night," according to Hartman. He did not explain how he had known the length of "the call" that day. Hartman further testified that he had asked Account Executive Larry Stoddard – as described in subsection B above, the official who would be the highest-ranking one at the site for Respondent Freeman – "what was happening," but that Stoddard had replied, "I don't know." According to Hartman, Stoddard walked over to Brady and watched him continue distributing paychecks to employees, "a few of [whom] said they were leaving". Eventually, testified Hartman, Stoddard had "a few words" with Brady, after which the latter began yelling not to leave because only a 15-minute break was being taken.

Hartman testified that many employees had already left by the time that Brady began telling them not to go and, "Larry Stoddard asked me to do a call to get some employees in." "I got hold of Kevin" Sabas, testified Hartman, and told him to get as many people as possible to come to the AARP Show site. Although Hartman acknowledged that he left the site at "4:30 or 5:00," he testified that Sabas had sent between six and ten "on-call, casual, extra employees" to the site. The next day, "Saturday," Hartman testified, he was told by Stoddard that when those employees had arrived, Brady had threatened "for every 653 person that showed up, three of his guys wouldn't want to work," with the result that Stoddard "sent our people home". Thus, as portrayed by Hartman, Steelworkers 17U had left the AARP Show short of needed "on-call, casual, extra" decorating employees on that Friday evening.

The second Friday incident, which Hartman claimed had occurred, purportedly involved "[t]he head guy for AARP." According to Hartman, that man "came up to me and was complaining about the labor and told me flat out that if 17U was going to do the call next year, they wouldn't be back" to hold a convention in Minnesota. Hartman also testified that the AARP "head guy" had complained about Brady moving employees around so that assigned crews ended up being short of members, about employees showing up as much as four hours late for work, and about "mass exodus" of employees at 5:00 p.m., leaving work unfinished.

Hartman testified that Stoddard and the "dock foreman" came to him, presumably during his Saturday visit to the AARP site, and "indicated" they would like Respondent UFCW 653 to supply "on-call, casual, extra employees" for the upcoming Human Resources Management Show of June 10 through 18, 1998. After conferring with "my Local president" and with counsel, testified Hartman, it was "decided that we had first call rights" to supply those employees for that June 10 through 18 show and, accordingly, Respondent UFCW 653 did so. In short, if Hartman is to be believed, Respondent Freeman called in "on-call, casual, extra employees" from Respondent UFCW 653 for the Human Resources Management Show solely because of shabby performance by employees in that classification supplied by Steelworkers 17U for the AARP Show.

Not one witness corroborated the foregoing testimony of Hartman. See discussion of the general principles of adverse inference in *NLRB v. MDI Commercial Services*, __F.3d___, 161 LRRM 2085 (April 21, 1999). No official of AARP appeared, nor was even identified, to corroborate Hartman's testimony about complaints to Hartman by that organization's "head guy" – that he had "appeared like Hairbrearth Harry in a Drury Lane melodrama, gave his ominous [complaints about work performance] and disappeared." *Schroeder Distributing Company*, 171 NLRB 1515, 1526 (1968). In fact, a summary of Respondent Freeman's Minneapolis-St. Paul metropolitan area shows for 1995 through 1998 shows that in none of the three years prior to 1998 had Respondent Freeman produced/service contracted a show there for AARP. Neither that summary nor any other evidence shows that, in the ordinary course of affairs, AARP would likely be planning to conduct a 1999 show in Minneapolis, as opposed to some other city.

Nor was Stoddard called as a witness, though there was neither evidence nor representation that he was not available to testify in support of Hartman's above-described account of events that Friday, were Stoddard willing to do so. Most significantly, Sabas did appear as a witness for Respondent UFCW 653. But, he gave no corroborative testimony about a supposed late Friday call from Hartman to find people to work the AARP Show that evening. Beyond that, no one from Respondent Freeman ever testified that the reason for having selected Respondent UFCW 653, to supply "on-call, casual, extra employees" for the Human Resources Management Show, had been the result of some sort of deficiency or impropriety by Steelworkers 17U officials and employees referred by it on the AARP Show.

Two aspects of the evidence might appear to lend some support to Hartman's above-described scenarios. First, Brady did concede that, during the AARP Show, there had been a Friday when some employees had left work after getting their paychecks and before work had been completed that day. However, he testified that those employees had first asked General or Senior Foreman Ray Pinegar if they could leave and, moreover, that Pinegar had been authorizing their departures until Stoddard discovered what was happening and countermanded Pinegar's departure-authorizations, albeit too late to recover those employees who had left already.

To be sure, Brady testified that, following his conversation with Pinegar, Stoddard had accused Brady of having caused a "walk out." Yet, Zaugg never denied having later told Brady

that there simply had been "a misunderstanding" and Pinegar never appeared as a witness to contradict Brady's testimony that it had been Pinegar who had authorized the work departures that Friday, without any input or involvement by Brady in those departure-authorizations. It is not necessary to go to the length of drawing an adverse inference from the failure to call AARP's "head guy," Stoddard and Pinegar, as discussed in *MDI Commercial Services*. For, failure to call them not only leaves uncorroborated much of Hartman's accounts, but it also leaves an absence of firsthand evidence about some of the events and supposed management decisions which Hartman claimed had occurred during the AARP Show. And given Brady's uncontested explanation of the early Friday departures, and his undisputed description of Zaugg's "misunderstanding" remark, there is no basis for concluding that Brady's testimony about them somehow supports in any respect Hartman's testimony about those early departures. To the contrary, the evidence does show that there had been early departures on that Friday evening, but that they had been authorized by Pinegar and that, while Stoddard may have initially believed that Brady was somehow responsible for them, that Zaugg had investigated and cleared Brady of any responsibility for employees having left early.

The other aspect involves the timecards of Steven Carlson and Eugene Schultz. As set forth above, Hartman claimed that Sabas had referred six to ten employees to the AARP site on that Friday evening – a claim not supported by the testimony of Sabas. Furthermore, Hartman claimed that, inasmuch as those employees purportedly had been sent home without having worked that evening, they were paid "a four hour minnie" for having reported, in part as a consequence of a grievance filed by Respondent UFCW 653.

Brady agreed that there had been an occasion when some Respondent UFCW 653-referred employees had reported to the AARP Show site. However, he testified that their appearances had occurred on a Saturday at the end of May. According to Brady, it was pointed out to him that Saturday that some Respondent UFCW 653-referred people were at the service desk. He went there, testified Brady, and discovered those people there with Pinegar. When he questioned the latter, according to Brady, Pinegar said he was uncertain why those people there – that, "They just sort of showed up and said they were going to go to work on this show and said that Larry called them in."

Brady testified that he then went to Stoddard and protested that "we filled the call" and that, "If you allow them to work, you are going to lose several people for every one that you bring on the show because they are going to want to leave." "It was not a threat in any way whatsoever," claimed Brady, but rather, "I was just telling him that he was developing an explosive situation." When Respondent Freeman decided to send those people home, rather than allow them to work, Carlson and Schultz demanded timecards to record that they had reported for work with Respondent Freeman. That was done and the cards were filled out by Carlson and Schultz.

Those timecards were produced. Rather than bearing a Friday date – as should have appeared on them, had Harman's testimony been accurate about a Friday evening referral by Sabas – both timecards record a date of "5-30". May 30 had been a Saturday during 1998. Those dates tend to refute the testimony of Hartman and, conversely, tend to confirm the account of Brady. Moreover, with the evidence partially contradicting Hartman's account – and, further, with no evidence whatsoever corroborating that account about the supposed Steelworkers 17U-responsibility for early Friday departures and the purported Saturday request by Stoddard that Respondent UFCW 653 supply "on-call, casual extra employees" for the Human Resources Management Show, because of those early Friday departures and because of supposedly shoddy performance by those employees referred to the AARP site by Steelworkers 17U – the record is left with no credible evidence even tending to justify

Respondent Freeman's use of "on-call, casual, extra employees" referred by Respondent UFCW 653 to the Human Resources Management Show, rather than the contractually-required referrals of Steelworkers 17U.

In sum, referrals for the 1998 Human Resources Management Show are a concrete example of Respondent Freeman's admitted use of "on-call, casual, extra employees" referred by sources other than Steelworkers 17U and, of course, Respondent Freeman admits that it applied to those employees terms and conditions of employment which were inconsistent with those specified in its contract with Steelworkers 17U, as well as admitting that it had recognized Respondent UFCW 653 as their collective bargaining representative. That conduct is not somehow justified by Hartman's testimony that Respondent UFCW 653's officials had conferred with counsel who agreed "that we had first call rights" to the "on-call, casual, extra" work on the Human Resources Management Show. No particularized evidence has been adduced showing the accuracy of such advice. Even good faith reliance on advice of counsel is no defense to an unfair labor practice charge. See, e.g., *NLRB v. Hendel Mfg. Co., Inc.*, 483 F.2d 350, 353 (2nd Cir. 1973); *Jerstedt Lumber Co., Inc.*, 209 NLRB 662(1974). Moreover, no one – such as Respondent UFCW 653' president – corroborated Hartman's account of having conferred with counsel, before reaching the decision to refer "on-call, casual, extra employees" to the Human Resources Management Show, and Hartman never described with particularity what counsel may have said nor, for that matter, what facts may have been given to counsel by Respondent UFCW 653's officials. "It is a rare attorney who will be fortunate enough to learn the entire truth from his own client." *Wheat v. United States*, 486 U.S. 153, 163 (1994).

Respondents Brede and Freeman both contend that it had been understood that the bargaining units in their Stipulated Election Agreements entitled them to continue obtaining referrals of "on-call, casual, extra employees" from sources other than Steelworkers 17U, and regarding those referrals as represented by union sources which referred them, so long as there were collective-bargaining contracts covering those employees as of August 3 and July 31, 1995, respectively. Respondent Brede has had the opportunity to litigate that contention, in the proceeding conducted before Judge West. So, its situation will not be addressed further in this proceeding.[12]

[12] Respondents Freeman and Brede moved to sever the cases involving the former from those involving Respondents Brede and UFCW 653, in light of that earlier proceeding involving only the latter two respondents. It does seem reasonable to grant that motion inasmuch as disposition of the allegations against Respondent Freeman are not contingent upon the Board's resolution of Judge West's conclusions involving Respondents Brede and UFCW 653. Even so, I am reluctant to take that step and, instead, leave it for the Board to take, should it feel that severance is warranted. First, much of the evidence in this proceeding involves all three of the respondents, intermeshed collectively. So, it may be counterproductive at my level to make a severance decision. More important, secondly, the Board may want to evaluate the conclusions of the prior proceeding by considering some of the evidence adduced in this proceeding. That is, the Board may want to, in effect, either reopen the record in the earlier proceeding to consider evidence adduced in this proceeding or, alternatively, consolidate some or all of the charges presented in this proceeding with those of the earlier proceeding. Inasmuch as I have no access to the record made in the earlier proceeding, and certainly am not allowed to re-evaluate the earlier proceeding's conclusions, as can be done by the Board, those possible decisions are beyond my authority and I feel that it is best to leave the situation as presented, so that the Board has maximum flexibility to pursue one or more of the several courses which might be traveled in connection with this and the prior proceeding.

Turning to the situation pertaining to Respondent Freeman, as pointed out in subsection B above, it only occasionally had been producer/service contractor for shows, expositions and conventions in the Minneapolis-St. Paul metropolitan area. And many of them there are subcontracted to Respondent Brede. Consistent with that relatively sporadic performance there of convention decorating work, unlike Respondent Brede, Respondent Freeman employs no regular and full-time employees in the Minneapolis-St. Paul metropolitan area, at least not so far as the evidence shows. All of the decorating employees which it employs there are, as a realistic matter, "on call, casual, extra employees," though some may be regular and full-time employees of Respondent Brede who obtain work with Respondent Freeman whenever Respondent Brede has no work for them.

It does seem accurate that prior to July 31, 1995, whenever Respondent UFCW 653 was unable to supply all "on-call, casual, extra employees" needed by Respondent Freeman for particular shows, the latter would resort to other sources to obtain the needed complement of those workers: to Teamsters, to Stagehands, perhaps to barroom sweeps. But, there is no evidence that prior to that date Respondent Freeman had been party to a collective-bargaining contract with any union other than Respondent UFCW 653, though it would follow other unions' area contracts whenever it employed "on-call, casual, extra employees" who happened to be referred to it by one or more of those unions other than Respondent UFCW 653. In short, the situation was marked by relative informality.

To be sure, Des Moines Operations General Manager Zaugg testified that Respondent Freeman had a contract with Teamsters. However, no contract was produced between Respondent Freeman and Teamsters for any period before July 31, 1995. Indeed, no such contract for any period was produced. Moreover, Zaugg testified that the Teamsters contract to which he referred had been "signed 30 days" before his second appearance as a witness, on April 7, 1999. "To the best of my knowledge, no," testified Zaugg, when asked if there had been a contract between Respondent Freeman and Teamsters before that recently-signed one. Of course, employers are not free to usurp an incumbent union's representative status by merely signing a contract with a different union covering already-represented employees – to deprive an incumbent union of its certified status by later substituting representation for those employees by a different union.

The only evidence of a collective-bargaining contract between Respondent Freeman and any union prior to July 31, 1995, is that which pertains to the contract with Respondent UFCW 653. While that contract, and its predecessors, provided terms pertaining to what have come to be called "on-call, casual, extra employees," as pointed out in subsection B above, it is undisputed that, during 1995, then-Business Agent Zahn had told Brady that Respondent UFCW 653 was not actually the collective-bargaining representative of "on-call, casual, extra employees" and did not intend to admit any of them to its membership.

Evidence was adduced concerning communications in connection with the Stipulated Election Agreements and the units specified in each. Most of that evidence, however, was directed to negotiation of the election agreement for the "on-call, casual, extra employees" of Respondent Brede – shoring and filling-in the evidence seemingly adduced in the proceeding before Judge West. As stated above, repeatedly, his resolutions are not ones that can be revisited in this proceeding.

Very little particularized evidence was adduced concerning communications about the "on-call, casual, extra employees" of Respondent Freeman. Zaugg wanted to treat the regular and full-time decorators of Respondent Brede – the so-called "core group" – as continuing to have referral preference over "on-call, casual, extra employees". But, there is no evidence of

what actually had been said in that connection during the pre-stipulated unit period. Even if there was evidence that employees in the core group would continue to have referral preference for work at Respondent Freeman, seemingly they would be regarded as "on-call, casual, extra employees" when employed by it, given that they are regular and full-time of employees of Respondent Brede, filling gaps in their employment with it by accepting temporary employment with other decorating employers, and given that Respondent Freeman employs no regular and full-time employees in the Minneapolis-St. Paul metropolitan area.

Zaugg did testify that he had always regarded employees referred from Respondent UFCW 653 as represented by that labor organization, by virtue of the very fact that it had referred them. The problem with that distinction is a statutory one: at root, it is a distinction based upon nothing more than the extent to which employees have been organized by one union or another. For the Board to countenance such a distinction in a representation proceeding, or allow parties to enter into election stipulations doing so, would contravene the prohibition of Section 9(c)(5) of the Act. That is, the Act does not allow certifications to issue to units of employees which one union has organized and represents, excluding like-situated employees whom another union happens to have organized and represents.

In a somewhat revealing display of inconsistency, by letter dated August 11, 1995, Respondent UFCW 653's counsel insisted that core group employees be added to the eligibility list for the election among Respondent Freeman's employees: "Those members of Local 653 have their membership by virtue of their employment with Brede. They should not be disqualified from voting in the election regarding their employment with Freeman, because of their union membership with another employer." Of course, given the units' description, that is a correct statement. Problem for Respondent UFCW 653 is that the unit included only "on-call, casual, extra employees" who satisfied stated prior work requirements. So, if members of the core group – the regular and full-time employees of Respondent Brede – were to be eligible to participate in the election among Respondent Freeman's employees, then they had to be regarded as "on-call, casual, extra employees" of Respondent Freeman – not as its regular and full-time employees of whom Respondent Freeman employed none, as stated above. In effect, by its letter, Respondent UFCW 653 conceded that regular and full-time employees of Respondent Brede were "on-call, casual, extra employees" when working for other convention decorating employers, such as Respondent Freeman.

As much was also conceded by the evidence concerning negotiations between Steelworkers 17U and Respondent Freeman, following the certifications' issuance on September 18, 1995. Questioned by Respondent UFCW 653's counsel, Respondent Freeman's counsel testified that repetition of the certification's "all other employees currently covered by other collective bargaining agreements" exclusion, in the 1997-1998 collective-bargaining contract between Respondent Freeman and Steelworkers 17U, "Theoretically…was to exclude the same type of arrangements that Brede had. Although we were not aware that there necessarily were any. We wanted to be safe and cover the waterfront." (Underscoring supplied.) Thus, counsel acknowledged the distinction between Respondent Freeman's and Respondent Brede's employment situations regarding decorating employees. It could not be reasonably contended that the foregoing testimony had somehow been a slip of the lip. For, counsel later testified:

> I think that there was an assumption and there could have been -- there probably was some discussion that these -- the 653 referrals to Freeman were folks that were or had worked for Brede were somehow on the 653 Brede seniority list or got to be in the pool to be referred somewhere through Brede. There was not any real discussion in the Steelworkers -- in any session that I was involved in over specific definitions or

descriptions or qualifications or any kind of specific attributes about the 653 referrals. It was a class of persons -- class of employees that was there. We felt it would continue to be there. We just didn't spend a lot of time talking about it.

In sum, while there may have been discussion during Respondent Freeman's negotiations about its ability to accept referral of Respondent Brede's regular and full-time employees, there is no evidence of any discussion that those, or any other, decorating employees would be regarded as regular and full-time employees of Respondent Freeman.

Beyond that, there is no particularized evidence whatsoever, during either pre-Stipulated Election Agreement communications nor during negotiations, that there had been any discussion, much less agreement, that any of the "on-call, casual, extra employees" who worked for Respondent Freeman would be excluded from those included in the stipulated bargaining unit. In other words, there is no particularized evidence that Respondents Freeman and UFCW 653 and Steelworkers 17U, before entering into the Stipulated Election Agreement, had agreed, or even discussed, that any "on-call, casual, extra employees", or group of them, would be encompassed by the "all other employees currently covered by other collective bargaining agreements" exclusion.

G. Unlawful Threat Attributed to Respondent Freeman

As set forth in subsection A above, it is alleged that Respondent Freeman violated Section 8(a)(1) of the Act as a result of an alleged threat by Zaugg to reduce work in the Minneapolis-St. Paul metropolitan area unless unfair labor practice charges filed by Brady and Steelworkers 17U were withdrawn. As will be seen below, the testimony about those threats was never effectively denied.

Zaugg testified that "since the organization began" by Steelworkers 17U, a total of 24 charges had been filed "either directly against Freeman Decorating or against" Respondent UFCW 653, with Respondent Freeman being named as the employer involved. Zaugg acknowledged that "the expense of this [sic] trial and the expense of the charges was weighing heavily on my shoulders" by September of 1998. So much so, in fact, that Zaugg acknowledged having sent a letter to Tommy Thomas, the head official of Steelworkers 17U, based in Chicago, dated July 17, 1998. In that letter, Zaugg complained about the lack of cooperation with Respondent Freeman that, in his view, Steelworkers 17U had been displaying. The letter concludes, "Prior to filing NLRB charges and grievances, talk to us about the problem. It may be that we can work out the problems without a formal charge. Formal charges indicate to us that there is no desire on [Steelworkers 17U]'s part to work things out." Passage of time did not reduce Zaugg's concern about the charges being filed against Respondent Freeman.

It is uncontroverted that during the Lumbermen's Show of September 15 through 20, 1998, Thomas telephoned Zaugg to inquire how things were going on that show. Zaugg testified that, after acknowledging that things were satisfactory, "I then asked him, Tommy what's going to happen to all these NLRB charges? To which he informed me they were going to be all be [sic] dropped," and asked Zaugg to "have Dan Brady give him [Thomas] a call." According to Zaugg, "I passed the message on the [sic] Dan Brady." Significantly, Zaugg testified that "in the conversation with Tommy Thomas the charges that were on my mind were the ones that are being reviewed here at the hearing," two of which, as of that time, had been filed against Respondent Freeman by Brady.

Obviously, those charges were not "dropped," as Thomas had assured Zaugg would happen. Beyond that, not only is Zaugg's testimony about his telephone conversation with

Thomas not contested, but neither did Zaugg dispute Brady's description of an ensuing telephone conversation between Brady and Thomas, during which Zaugg had been present when Brady was speaking on the phone.

As to that conversation, Brady testified that Zaugg "walked over to me and asked me to give Tommy a call and we walked back to the service desk together where I -- where he [Zaugg] actually called Tommy Thomas and then handed me the phone." According to Brady's uncontroverted testimony, after a brief discussion about how things were going on the Lumbermen's Show, Thomas said that Zaugg "had asked me if I would drop the NLRB charges," to which Brady, after "look[ing] at Jim who was standing there," replied, "I just found out there were two more shows that we didn't [get] called for this morning." Still, testified Brady, he told Thomas, "Well, I will talk to Jim [Zaugg] about it. He's standing right here," and, "If he wants to discuss it, I will." However, Brady testified, when he then asked if Zaugg "want[ed] to talk about dropping these NLRB charges," Zaugg answered, "Well, not right now," after which Brady said on the phone to Thomas, "I'm not going to drop any charges right now. We have got a lot of things to discuss about it."

So far as the record discloses, Zaugg never did initiate a subsequent discussion with Brady about the charges until Freeman was producing/service contracting the Shakopee Crafts, sometimes referred to as the Canterbury Crafts, Show from October 27 through November 2, 1998. By letter dated October 22, 1998, Brady had requested that Zaugg furnish a list of shows which Respondent Freeman intended to produce/service contract during 1999. Upon arriving home on Friday, October 30 from working on that show, Brady testified that he discovered a message from Zaugg on his answering machine: "Dan, we've got to do something about these NLRB charges. We'd like to drop them if you can. Would you give me a call at your earliest convenience."

Zaugg equivocated somewhat as to having called Brady, in response to the latter's October 22 letter: "My memory serves that Dan called me. Possibly I called him first." Then, he conceded, "I possibly could have called him and left him a message prior to that to call me. I don't recall." Significantly, Zaugg never disputed Brady's testimony about the substance of the message which Zaugg had left on the answering machine.

Both men agreed that there ultimately did take place a telephone conversation between them. Zaugg placed that conversation as having occurred on November 3. He testified that, during it, he "assured" Brady that a calendar of those shows would be sent to Steelworkers 17U, but that he (Zaugg) was hesitant to do so at that time. According to Zaugg, "I was reluctant to provide that because we had many shows that were pending, that were not firmed up as far as us receiving contracts from associations," and, in addition, Respondent Freeman "also had not made a final determination on which jobs were going to be subcontracted to Brede."

Brady testified that Zaugg had also said "that unless we dropped the NLRB charges there weren't going to be any more upcoming shows," and that "[h]e was going to sub them all out to Brede up here." Of course, such a statement – about subbing shows out to Respondent Brede – is not inconsistent with Zaugg's above-stated statement that, as of the date of this telephone conversation with Brady, Respondent Freeman "had not made a final determination on which jobs were going to be subcontracted to Brede." Moreover, by not having sent a list of 1999 shows to Steelworkers 17U, Respondent Freeman was effectively keeping open its option to subcontract all 1999 Minneapolis-St. Paul metropolitan area shows to Respondent Brede. That is, it avoided making a commitment to which Steelworkers 17U could later point as evidence that Respondent Freeman had switched direction and subcontracted shows to Respondent Brede, after having informed Steelworkers 17U about those shows.

Respondent Freeman elicited testimony that, in the final analysis, skirted direct denial of the above-quoted threat which Brady attributed to Zaugg. "I did not," Zaugg testified, ever tell Brady that no calendar of 1999 shows would be shown to Brady unless he dropped unfair labor practice charges, nor say that he (Zaugg) did not want to send the calendar to Brady unless the latter dropped the charges. Of course, as quoted above, Brady never claimed that Zaugg had tied not sending a 1999 show-calendar to dropping the charges; Brady testified that Zaugg had threatened that Respondent Freeman would subcontract all 1999 Minneapolis-St. Paul shows to Respondent Brede unless the charges were dropped.

Zaugg did deny that Respondent Freeman ever had made a subcontracting decision in the Minneapolis-St. Paul metropolitan area based either on pendency of unfair labor practice charges or on the basis of any issue pertaining to labor. But, again, those denials are not responsive to the threat attributed to him by Brady. Respondent Freeman is not alleged to have actually subcontracted work because of the charges; it is alleged that its general manager threatened to subcontract work unless the charges were dropped.

The closest Zaugg came to a denial of that threat, attributed to him by Brady, occurred when he was asked if he had ever told Brady that anything about the existence of charges would influence how many shows Respondent Freeman was going to produce in the Minneapolis-St. Paul area. Rather than simply answer that question in the negative or affirmative, as he had in response to questions which bred the answers described in the immediately preceding two paragraphs, Zaugg answered somewhat unresponsively: "When I vented my frustration over the number of NLRB charges, I'm sure that at some point I said, you know, why should Freeman go through these enormous expenses of trials and one charge after another which we continue to win when we have other options. That would be as close as I could have come." To the extent that such an answer might be characterized as a denial, two other events should be considered.

First, no 1999 show calendar was forthcoming after Brady's above-described conversation with Zaugg. So, testified Brady, "I filed an NLRB charge as a result of this" telephone conversation with Zaugg. In fact, the charge in Case 18-CA-15057 was filed on November 16, 1998. And, in part, it alleges that Zaugg had "refused to provide relevant information to [Steelworkers 17U], specifically a calendar or other information concerning its upcoming work schedule." By letter dated the following day, November 17, 1998, Zaugg sent to Brady a list of five "firm jobs that Freeman is to produce in Minneapolis in 1999." Attached to that list was a copy of Zaugg's above-described letter to Thomas of July 17, 1998 – the one in which Zaugg stated, *inter alia*, "Formal charges indicate to us that there is no desire on the union's part to work things out." Zaugg never explained why he had so-belatedly chosen to send a copy of that July letter to Brady.

Second, Daniel Mulligan, an "on-call, casual, extra" employees and a known supporter of Steelworkers 17U, mentioned in subsection E above, testified that he had asked Brady about available work from Respondent Freeman during 1999. Brady replied, apparently based upon Zaugg's above-mentioned list supplied with the November 17 letter, "we were only going to be doing about five of them and the other ones were going to be subbed out to Brede," testified Mulligan. Mulligan placed this conversation as having occurred during the Shakopee or Canterbury Crafts Show, which would have been between October 27 and 29, or on November 2, 1998. Especially in view of the five 1999 shows listed in Zaugg's post-charge letter to Brady, however, it seems more likely that it had not been until after November 17 that Mulligan had questioned Brady about 1999 shows for Respondent Freeman. Renewed discussion of that subject finally led Brady to suggest that Mulligan call Zaugg with his (Mulligan's) questions.

Mulligan testified that he did call Zaugg. Zaugg never contested Mulligan's testimony about the substance of their ensuing conversation, especially that Zaugg had said to Mulligan that Respondent Freeman was "willing to work with any union" it had to in the Minneapolis-St. Paul metropolitan area, but that "a large part of how much work we do up there depends on what the NLRB decides," and, further, "because of the fact that every time they turned around Dan Brady filed another charge up here he didn't find it very profitable to be doing business in Minneapolis." Of course, that does not constitute an actual threat to subcontract work should charges not be withdrawn. But, Zaugg's undisputed remarks to Mulligan do show that Zaugg drew an equation between charges and Respondent Freeman not regarding it to be profitable to do business in the Minneapolis-St. Paul metropolitan area in the face of those charges.

In sum, as set forth above, Brady testified that Zaugg had threatened to subcontract all of Respondent Freeman's Minneapolis-St. Paul metropolitan area work to Respondent Brede unless unfair labor practices charges against Respondent Freeman were dropped. Zaugg never effectively denied having made that threat to Brady. To the contrary, much of Zaugg's testimony – that he had earlier broached the subject of charges with Thomas during September 1998, that "weighing heavily" on him was the expense of charges, that he had "vented my frustration over the number of NLRB charges" to Brady – tends to show that Zaugg likely had made that subcontracting threat. Brady's testimony about the threat tended to further be corroborated by Zaugg's comments in his letter to Thomas of July 17, 1998, by his unexplained inclusion of a copy of that letter with the calendar sent to Brady four months later, and by Zaugg's undisputed remarks to Mulligan, again equating charges with Respondent Freeman's willingness to continue decorating work in the Minneapolis-St. Paul metropolitan area.

When he testified to Zaugg's threat, Brady appeared to be doing so with candor. I credit his account of Zaugg's subcontracting threat should the charges not be "dropped".

Now, it might be argued that decorating work would be available during 1999 in the Minneapolis-St. Paul metropolitan area for "on-call, casual, extra employees," even if performed by Respondent Brede, rather than by Respondent Freeman – that a threat of subcontracting had been a meaningless one, because those employees would be performing that work for one respondent rather than the other. Yet, such a conclusion is overly simplistic in the circumstances.

As of the Fall of 1998, Respondent Freeman had executed a second collective-bargaining contract with Steelworkers 17U, one for a term of July 8, 1998 through July 1, 1999. Respondent Brede did not have a similar contract with Steelworkers 17U. To the contrary, notwithstanding issuance of Judge West's Decision on August 14, 1998, there is no evidence that Respondent Brede had reversed its position, based upon the State Bureau of Mediation Service's certification, that Respondent UFCW 653, not Steelworkers 17U, was by then the exclusive collective-bargaining representative of "on-call, casual, extra employees" whom Respondent Brede employed. Thus, were Respondent Freeman's ordinarily-performed-work to be performed by Respondent Brede during 1999, Brady and other "on-call, casual, extra employees" confronted the possibility of being employed by an employer which unlawfully did not recognize the collective-bargaining representative chosen by those employees.

Beyond that, as concluded in subsection E above, Respondent UFCW 653 had been skipping over Brady in referrals made to Excel. There would be no reason for him to conclude that Respondent UFCW 653 would be less disposed to skip over him should it make "on-call, casual, extra" referrals to Respondent Brede during 1999. In fact, given the efforts by Respondent UFCW 653 to have those employees sign its authorization cards and membership applications before allowing them to work on its shows, as also described in subsection E

above, Brady could reasonably fear that he would be obliged to execute like documents before being allowed to work on 1999 shows, exhibitions and conventions which Respondent Freeman subcontracted to Respondent Brede. In the totality of these circumstances, it hardly can be maintained with persuasion that "on-call, casual, extra employees," such as Brady, would not reasonably apprehend detriment if, rather than being producer/service contractor itself, Respondent Freeman subcontracted to Respondent Brede all or almost all convention decorating work in the Minneapolis-St. Paul metropolitan area.

II. Discussion

Given the discussions in Section I's subsections, there is no need for prolonged repetition of the facts underlying any of the alleged violations, save for one. Thus, it is alleged that Respondent Brede violated the Act by rejecting a request to bargain with Steelworkers 17U, and by failing and refusing to bargain, about employment terms and conditions of "on-call, casual, extra employees" referred and represented by Stagehands. As discussed in Section I.C., *supra*, Judge West concluded that, following Steelworkers 17U's certification, Respondent Brede had unlawfully "substantially increas[ed] its reliance on" Stagehands as a source of "on-call-casual, extra employees". A natural consequence of that increased reliance is the erosion, potentially the elimination, of "on-call, casual, extra employees" whom Steelworkers 17U, the certified bargaining representative of those employees, would be able to represent. In consequence, Respondent Brede was using the Stagehands-referred and -represented employees to limit, perhaps eventually eliminate altogether, employees in the certified bargaining unit for which Steelworkers 17U was supposed to be the exclusive collective bargaining representative.

An employer cannot avoid its statutory bargaining obligations under the Act by simply employing in an incumbent bargaining agent's certified unit an expanded number of employees represented by another union and by recognizing that other union as the representative of that expanded number of employees. To allow such conduct would be to allow private parties to obliterate the certification process which Congress has mandated should be observed. Consequently, Respondent Brede cannot escape its statutory bargaining obligation by employing employees in the bargaining unit who are obtained from another union. By refusing to bargain with Steelworkers 17U about employment terms and conditions for employees in the certified bargaining unit, whom it had obtained from Stagehands' referral, Respondent Brede violated Sections 8(a)(5) and (1) of the Act.

Turning then to the alleged unlawful conferral and acceptance, respectively, by Respondent Brede and by Respondent UFCW 653, of recognition pursuant to State certification, based upon Judge West's conclusions, Respondent UFCW 653 had obtained authorization cards from Respondent Brede's "on-call, casual, extra employees" at a time when the lingering effects of earlier unfair labor practices remained unremedied. Those unfair labor practices naturally tended, measured by objective standards, to undermine employee-support for an incumbent bargaining agent. In such circumstances, it cannot be concluded that the authorization cards, and any membership applications, for Respondent UFCW 653 truly reflected the uncoerced choice of employees who had signed them. Therefore, by granting recognition to Respondent UFCW 653 on May 12, 1998, on the basis of a count of those cards, Respondent Brede violated Sections 8(a)(2) and (1) of the Act. In the process, concomitantly, Respondent Brede effectively withdrew recognition from Steelworkers 17U, as the incumbent certified collective-bargaining representative of those employees, and thereby further violated Sections 8(a)(5) and (1) of the Act.

For its part, Respondent UFCW 653 had secured those authorization cards during a period when some of Respondent Brede's unfair labor practices were being committed and all of the cards were secured while the lingering effects of those unfair labor practices remained unremedied. Respondent UFCW 653 can hardly claim ignorance of those unfair labor practices. It had been a respondent in the same March 1998 hearing in which Respondent Brede's unfair labor practices were being litigated before Judge West. Indeed, one of those alleged unfair labor practices heard by Judge West was that Respondent Brede had conferred unlawful recognition upon – and had unlawfully entered into, maintained and enforced a partial collective-bargaining agreement with – Respondent UFCW 653 on or about January 4, 1996. Therefore, Respondent UFCW 653 had knowledge of Respondent Brede's unremedied unfair labor practices during the period when it secured authorization cards from the latter's "on-call, casual, extra employees" and, certainly, during the period when it demanded and accepted recognition from Respondent Brede, as a result of the state-conducted card check. By having done so, Respondent UFCW 653 violated Section 8(b)(1)(A) of the Act.

As discussed in Section I.E., *supra*, a preponderance of the credible evidence establishes that Sabas and, especially, Harman told employees that they would have to join Respondent UFCW 653 – or, at least, designate it as their collective-bargaining agent, by signing authorization cards – to work on the Human Resources Management Show. In the first place, as described in Section I.F., *supra*, and as discussed below, Respondent Freeman violated the Act by failing to honor its contractual referral obligation to Steelworkers 17U when it secured "on-call, casual, extra employees" for that show from Respondent UFCW 653. Beyond that, labor organizations are not allowed under the Act to extract membership commitments – nor, even, designations of support, such as authorization cards – as the price for referring to work or for allowing employees to work, save of course to the limited extent allowable under the first proviso of Section 8(a)(3) of the Act. The statements of Sabas and Hartman exceeded that statutory allowance.

The Human Resources Management Show should have been staffed by "on-call, casual, extra employees" referred and represented by Steelworkers 17U, pursuant to the 1995 certification and to the then-effective collective-bargaining contract between that labor organization and Respondent Freeman. Instead, the latter disregarded that contractual obligation and sought referrals of those employees from Respondent UFCW 653. In turn, the latter's officials utilized its unlawful selection as the source of "on-call, casual, extra employees" for that show as the basis for telling those employees that they had to sign-up with Respondent UFCW 653 to be allowed to work on that show. By those statements of its admitted agents, Respondent UFCW 653 violated Section 8(b)(1)(A) of the Act.

Beyond that, as also described in Section I.E., *supra*, Respondent UFCW 653 failed to refer Brady to Excel's two 1998 Minneapolis shows. Brady was on the list for referral to those shows. Respondent UFCW 653 concedes that it would have referred him to those shows in the ordinary process of referral. But, Brady was not referred to either show. It is admitted that Sabas, Respondent UFCW 653's official making those 1998 referrals to Excel, had harbored animus toward Brady because of the latter's status as official of another labor organization, Steelworkers 17U. In an effort to justify his failure to refer Brady to either 1998 Excel show, Sabas advanced testimony which was not credible. As a result, Respondent UFCW 653 has failed to advance credible evidence of any lawful reason for non-referral of Brady to Excel's 1998 Minneapolis shows. Therefore a preponderance of the credible and objective evidence supports the allegation that Respondent UFCW 653 unlawfully failed and refused to refer Brady to those shows because of his support for and activities on behalf of another labor organization, in violation of Sections 8(b)(1)(A) and (2) of the Act.

Turning to the allegations against Respondent Freeman, as concluded in Section I.G., *supra*, a preponderance of the credible evidence establishes that its Des Moines Operations general manager did tell Brady that unless unfair labor practices charges against it were withdrawn – "dropped" – Respondent Freeman would subcontract all 1999 work on Minneapolis-St. Paul metropolitan area shows to Respondent Brede. That was a threat of potentially meaningful detriment to Brady and other "on-call, casual, extra employees" represented by Steelworkers 17U, most importantly a threat of possible loss of employment during 1999, as well as of loss of representation by their chosen bargaining agent. Therefore, I conclude that the threat did constitute a violation of Section 8(a)(1) of the Act.

Which leaves for consideration the ultimate allegations that Respondent Freeman violated Sections 8(a)(5) and (1) of the Act by choosing a source of referral – Respondent UFCW 653 – other than Steelworkers 17U for "on-call, casual, extra employees" since October 13, 1997, thereby not honoring a contractual obligation imposed by Respondent Freeman's collective-bargaining agreement with Steelworkers 17U; by recognizing Respondent UFCW 653 as the representative of those employees which it had referred to Respondent Freeman; and, by applying to those Respondent UFCW 653-referred employees terms and conditions of employment inconsistent with Respondent Freeman's collective-bargaining contract with Steelworkers 17U. As pointed out in Section I.F., *supra*, Respondent Freeman admits those factual allegations, but contends that it lawfully engaged in that conduct pursuant to the "all other employees currently covered by other collective bargaining agreements" unit exclusion of Steelworkers 17U's Certification of Representative and of the Stipulated Election Agreement underlying it. To determine whether Respondent Freeman's conduct constituted unfair labor practices, accordingly, it is necessary to analyze the stipulated bargaining unit's inclusions and exclusion.

When a stipulation exists for an appropriate unit, that stipulation constitutes "a binding contract between the parties," (citation omitted) *Henry Ford Health System v. NLRB*, 105 F.3d 1139, 1147 (6th Cir. 1997), and where "the terms of the stipulation are unambiguous, the Board must hold the parties to its text." *Avecor, Inc. v. NLRB*, 931 F.2d 924, 932 (D.C. Cir. 1991), cert. denied, 502 U.S. 1048 (1992). Here, while a long and complicatedly-worded one, the stipulated unit description is not so ambiguous, in the circumstances, as might be thought at first blush.

The unit inclusions break down into two components. To be included, an employee must, first, be an "on-call, casual, extra" employee employed as a journeyperson or helper. Scant evidence is devoted to that last part: "journeypersons or helpers". Still, no party has argued that the "on-call, casual, extra employees" of Respondent Freeman at issue here had been other than "employed [by it] as journeypersons or helpers". Given the extent of litigation about the units, and the evidence adduced and arguments made during hearing about the twin units, surely Respondent Freeman or Respondent UFCW 653 would have opened the issue of "journeypersons or helpers," had there been some basis for contending that some or all of the "on-call, casual, extra employees" employed by Respondent Freeman on shows on and after October 13, 1997, such as the Human Resources Management Show, had not qualified as either "journeypersons or helpers". That this did not happen tends to indicate that there is no dispute about the fact that all "on-call, casual, extra employees" working for Respondent Freeman on and after that date had been "journeypersons [or] helpers," within the meaning of the unit inclusion, regardless which labor organization had referred them there. To the extent that one or a few may not have been, that is a subject which can be addressed in the compliance phase of this proceeding. *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883 (1984).

The second component of the unit inclusions is that, to be eligible for unit inclusion, an employee must have worked "at least two shows, exhibitions and/or conventions at facilities

locate in the Minneapolis-St. Paul, MN metropolitan area for at least five working days during the past twelve months or … been employed by the Employer at such events for at least 15 days within the past two years". Not much attention was paid to this second component during the hearing and, accordingly, its meaning is not in issue. Nevertheless, some attention should be paid to it, because "on-call, casual extra employees" who failed to satisfy that minimum show, exhibition and/or convention-requirement, or who failed to work the minimum floor of days during the periods specified, are not included in the certified bargaining units. Indeed, even if an employee later satisfied that two-part number of shows, etc. and minimum number of days test – by work performed after September 18, 1995 – that employee may never be included in Steelworkers 17U's certified unit, given the fact that that employee was not eligible for inclusion when the Stipulated Election Agreement for Respondent Freeman's employees had been approved.

In fact, proceeding one step further, employees newly hired after that approval may not be eligible for inclusion in the unit and representation by Steelworkers 17U, given that they had not been employed prior to that agreement and, thus, had not as of that time satisfied the shows- and work time-tests. Indeed, if there is ambiguity in the unit description, it arises in this second, not the first, component of the unit description's inclusions. Even so, any such ambiguity need not be resolved since, as pointed out above, it is not brought into issue here. If it comes to be an issue in the compliance phase of this proceeding, in connection with computation of backpay, for example, it can be addressed at that stage.

Shorn of the above-described non-issues, left for consideration is interpretation of a unit which includes, "All on-call, casual, extra employees," but which excludes "all other employees currently covered by other collective bargaining agreements". Unlike the situation presented Judge West of possible Respondent Brede collective-bargaining contracts with unions other than Respondent UFCW 653, here the evidence fails to reveal that Respondent Freeman had been party to a collective-bargaining contract with any union other than Respondent UFCW 653 as of August 3, 1995, when the Stipulated Election Agreement between those two parties and Steelworkers 17U had been approved.

Of course, the most-recent contract between Respondents Freeman and UFCW 653 had contained provisions for what have come to be referred to as "on-call, casual, extra employees". Yet, as parties to that contract and, also, to the Stipulated Election Agreement, those two respondents were free to agree upon severance of a part of their contractual unit. Nothing in the record shows that it would have been contrary to any purpose of the Act for them to have, in reality, agreed to sever, in effect, part-time employees from a historic bargaining unit. Their part-time employment status is an objective standard.

Of course, as pointed out in Section I.B., *supra*, Respondent Freeman employs, and has never employed, regular and full-time decorating employees in the Minneapolis-St. Paul metropolitan area, as has Respondent Brede. Thus, all of Respondent Freeman's decorating employees in that metropolitan area have been "on-call, casual, extra employees". To be sure, some of Respondent Brede's regular and full-time employees have worked occasionally for Respondent Freeman. When doing so, however, they are not working for Respondent Freeman as its regular and full-time employees. Rather, they are employed by Respondent Freeman only so long as it needs "on-call, casual, extra employees" for a particular show, exhibition or convention and so long as they are free from their regular work with Respondent Brede.

That reality is not altered by the fact that Respondent UFCW 653 – and Respondent Freeman, as well – had been according employment preference to regular and full-time employees of Respondent Brede when they were referred to Respondent Freeman. So far as

the evidence shows, those regular and full-time employees performed the same duties for Respondent Freeman as did "on-call, casual, extra employees" whom it was employing. Nor is that fact changed by the fact that Respondents Freeman and UFCW 653 had agreed to compensate at regular and full-time rates and benefits the regular and full-time employees of Respondent Brede, whenever one or more of them happened to work for Respondent Freeman. Referral preferences and higher compensation and benefits cannot, under the Act, change the status of irregular employment some sort of full-time employment. Such preferences merely work to the benefit, nor the employment status, of employees. Indeed, as pointed out in Section I.F., *supra*, in his letter of August 11, 1995, Respondent UFCW 653's counsel seemed to concede as much, since he argued that those regular and full-time employees of Respondent Brede should be regarded as eligible to cast ballots in the "on-call, casual, extra employees" unit for Respondent Freeman's employees.

Beyond questions of severance, and of "on-call, casual, extra" status versus that of regular and full-time status, it should not be overlooked that during 1995, before Steelworkers 17U had filed its representation petitions, it is uncontested that Respondent UFCW 653's then-business agent had told Brady that, actually, Respondent UFCW 653 did not regard itself as the collective-bargaining representative of what have come to be called "on-call, casual, extra employees". That, in effect, disclaimer, in the face of some employment terms negotiated in the past for those employees, warrants a conclusion that although Respondent UFCW 653 had negotiated some employment terms for "on-call, casual, extra employees," it had done so not because it was their collective-bargaining representative, but rather as an afterthought – to exclude them from contractual benefits which were being contractually conferred upon the regular and full-time employees of Respondent Brede.

In light of the foregoing considerations, it cannot be said that some inherent inequity is being worked by excluding from representation by Respondent UFCW 653 all "on-call, casual, extra employees" of Respondent Freeman. Those two respondents executed the Stipulated Election Agreement. There is no evidence that, during negotiations preceding that execution, Respondent UFCW 653 had sought specifically to retain representation of any "on-call, casual, extra employees" whom it had been referring to Respondent Freeman in the past, except, of course, if it won the representation election and except, of course, those employees who failed to satisfy the minimum number of shows and work days provided by that agreement.

An examination of the inclusionary and exclusionary language of the agreement supports a conclusion that the "currently covered by other collective bargaining agreements" exclusion, of itself, does not preserve for Respondent UFCW 653's representation any "on-call, casual extra employees" other than those who had failed to work a sufficient minimum time on two or more shows, exhibitions and/or conventions for Respondent Freeman during the periods specified in the stipulation. First, the agreement's inclusion of "on-call, casual, extra employees" is preceded by the word, "All." Read naturally, that term is an expansive one.

Secondly, the phrase, "All on-call, casual, extra employees" is a specific one, while the phrase "employees currently covered by other collective bargaining agreements" is a more general one. It is a well-established interpretative "canon that specific provisions qualify general ones." (Citation omitted.) *Robertson v. Seattle Audubon Society*, 503 U.S. 429, 430 (1992).[13]

[13] I recognize that the cited case involved statutory, not contractual, interpretation. Yet, standing alone, there is no reason why a canon of statutory interpretation cannot also be utilized when interpreting other documents, such as Stipulated Election Agreements. If anything, a canon of value in interpreting a statute would seem to be of equal value when interpreting other

Continued

Thirdly, the exclusionary language to which Respondents Freeman and UFCW 653 point begins "all other employees currently covered by other collective bargaining agreements". (Underscoring supplied.) Obviously, use of the word "other" in that context must be given full meaning. And its only naturally-read meaning is employees "other" than those specified in the unit inclusion. Thus, included in the unit are "All on-call, casual, extra employees employed by the Employer as journeypersons or helpers," who meet the minimum show- and work-requirements, but excluding "all other employees" who happen to be then "covered by other collective bargaining agreements".

Acceptance of Respondents Freeman and UFCW 653's interpretation of the unit would mean that a class of employees was included in the stipulated bargaining unit, but then removed from it a few phrases later. As an objective matter, that would be a ridiculous conclusion – would allow "a degree of verbal know-nothingism that would render [meaningful interpretation of stipulated bargaining units] quite impossible. *Deal v. United States*, 508 U.S. 129, 135 (1993).

Beyond that, such an interpretation would allow Respondent Freeman to pick and choose – for each show, exhibition and convention – the bargaining representative of the "on-call, casual, extra employees" which it employed. In a very real sense, it would be permitted to select those employees based upon no standard other than "the extent to which [those] employees have been organized" by Respondent UFCW 653 or by Steelworkers 17U. Such a result is hardly one countenanced under Section 9(c)(5) of the Act.

In sum, I reject the argument that the "all other employees currently covered by other collective bargaining agreements" exclusion is so broad that it gobbles up the unit inclusion of "All" of the "on-call, casual, extra employees" whom Respondent Freeman employs. Furthermore, inasmuch as Respondent Freeman admits that, contrary to its collective-bargaining contract with Steelworkers 17U, it had been resorting to sources other than that labor organization since October 13, 1997, for "on-call, casual, extra employees" and had been recognizing whichever union happened to represent those employees as their representative while working for it and, in addition, had been applying to those employees terms and conditions of employment other than those negotiated with Steelworkers 17U, I conclude that, by that conduct, Respondent Freeman violated Sections 8(a)(5) and (1) of the Act.

Conclusions of Law

Brede, Inc. has committed unfair labor practices affecting commerce by rejecting a request by, and failing and refusing to bargain with, United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U – as the exclusive collective bargaining representative of employees in an appropriate bargaining unit of: All on-call, casual, extra employees employed by Brede, Inc. as journeypersons or helpers during at least two shows, exhibitions, and/or conventions at facilities located in the Minneapolis-St. Paul, MN metropolitan area for at least five working days during the past twelve months or who have been employed by Brede, Inc. at such events for at least 15 days within the past two years; excluding office clerical employees, professional employees, managerial employees, all other employees currently covered by other collective bargaining agreements, and guards and supervisors as defined in the National Labor Relations Act, as amended – about employment terms and conditions of employees employed

documents, so long as there is no inherent reason for limiting its application to statutory interpretation. No such reason exists in the context presented here.

in that unit because those employees had been referred to employment by another union, and by withdrawing recognition from the above-named labor organization as the exclusive collective-bargaining representative of employees in that bargaining unit at a time when unremedied unfair labor practices by Brede, Inc. had naturally eroded employee-support for that labor organization, thereby inherently precluding employees from making an uncoerced choice of a different collective-bargaining representative, in violation of Sections 8(a)(5) and (1) of the Act; and, by rendering unlawful assistance and support to United Food & Commercial Workers International Union, Local No. 653, by granting it recognition as the exclusive collective-bargaining representative of employees in the above-stated bargaining unit, at a time when there were unremedied unfair labor practices having a natural effect of undermining employee-support for an incumbent bargaining representative and, therefore, at a time when United Food & Commercial Workers International Union, Local No. 653 did not represent an uncoerced majority of employees in that bargaining unit, in violation of Sections 8(a)(2) and (1) of the Act.

United Food & Commercial Workers International Union, Local No. 653 has committed unfair labor practices affecting commerce by failing and refusing since May 1998 to refer employee Daniel Brady to employment with Excel Decorators, Inc., for no reason other than Brady's support for, and activities on behalf of, another labor organization, in violation of Sections 8(b)(1)(A) and (2) of the Act; and, by demanding and accepting recognition from Brede, Inc., as the exclusive collective-bargaining representative of employees in the above-stated bargaining unit, with knowledge that there existed unremedied unfair labor practices which inherently prevented those employees from making an uncoerced choice of a collective-bargaining representative other than their incumbent certified representative, and by telling employees that they had to sign membership applications and authorization cards, designating it as those employees' bargaining agent, to be allowed to work on shows, expositions and conventions to which United Food & Commercial Workers International Union, Local No. 653 was unlawfully referring employees, in violation of Section 8(b)(1)(A) of the Act.

Freeman Decorating Co. has committed unfair labor practices affecting commerce by failing to honor the referral provisions of its collective-bargaining contracts with United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U – as the exclusive collective bargaining representative of employees in an appropriate bargaining unit of: All on-call, casual, extra employees employed by Freeman Decorating Co. as journeypersons or helpers during at least two shows, exhibitions, and/or conventions at facilities located in Minneapolis-St. Paul, MN metropolitan area for at least five working days during the past twelve months or who have been employed by Freeman Decorating Co. at such events for at least 15 days within the past two years; excluding office clerical employees, professional employees, managerial employees, all other employees currently covered by other collective bargaining agreements, and guards and supervisors as defined in the National Labor Relations Act, as amended – and seeking referrals from United Food and Commercial Workers Union, Local 653, by recognizing United Food & Commercial Workers International Union, Local No. 653 as the collective bargaining representative of employees in that bargaining unit whom it sent as referrals to perform work covered by that bargaining unit, and by applying to employees referred by United Food & Commercial Workers International Union, Local No. 653 employment terms and conditions other than those specified in collective-bargaining contracts with United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U, in violation of Sections 8(a)(5) and (1) of the Act; and, by threatening to subcontract all 1999 work in the Minneapolis-St. Paul metropolitan area unless unfair labor practice charges against it were not withdrawn, in violation of Section 8(a)(1) of the Act.

Remedy

Having concluded that Brede, Inc., United Food & Commercial Workers International Union, Local No. 653, and Freeman Decorating Co. have engaged in unfair labor practices, I shall recommend that each of them be ordered to cease and desist therefrom and, further, that each be ordered to take certain affirmative action to effectuate the policies of the Act. With respect to the latter, Brede, Inc. shall be ordered to resume recognizing and to bargain collectively with United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U – as the exclusive collective bargaining representative of: All on-call, casual, extra employees employed by Brede, Inc. as journeypersons or helpers during at least two shows, exhibitions, and/or conventions at facilities located in the Minneapolis-St. Paul, MN metropolitan area for at least five working days during the past twelve months or who have been employed by Brede, Inc. at such events for at least 15 days within the past two years; excluding office clerical employees, professional employees, managerial employees, all other employees currently covered by other collective bargaining agreements, and guards and supervisors as defined in the National Labor Relations Act, as amended – and embody any agreement reached in a written contract.

United Food & Commercial Workers International Union, Local No. 653 shall be ordered to, within 14 days of the date of this Order, notify Daniel P. Brady in writing that it will refer him to employment to Excel Decorators, Inc., and to all other employers to whom he is eligible for referral, without regard to his support for and activities on behalf of United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U, or any other labor organization. In addition, it shall be ordered to make Brady whole for any loss of earnings and other benefits he suffered because he was discriminatorily not referred to employment with Excel Decorators, Inc. after May 1, 1998, with backpay to be computed on a quarterly basis, making deductions for interim earnings, *F.W. Woolworth Co.*, 90 NLRB 289 (1950), and with interest to be paid on the amounts owing, as computed in *New Horizons for the Retarded*, 238 NLRB 1173 (1987).

Freeman Decorating Co. shall be ordered to recognize and bargain with United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U for all employees which it employs in an appropriate bargaining unit of: All on-call, casual, extra employees employed by Freeman Decorating Co. as journeypersons or helpers during at least two shows, exhibitions, and/or conventions at facilities located in the Minneapolis-St. Paul, MN metropolitan area for at least five working days during the past twelve months or who have been employed by Freeman Decorating Co. at such events for at least 15 days within the past two years; excluding office clerical employees, professional employees, managerial employees, all other employees currently covered by other collective bargaining agreements, and guards and supervisors as defined in the National Labor Relations Act, as amended. Moreover, it shall be ordered to honor all employment referral and other terms of its collective-bargaining contracts with that labor organization for employees employed in the aforestated bargaining unit. Furthermore, it shall be ordered to make whole both all employees who have worked in that bargaining unit since October 13, 1997 and, as well, all employees who should have been referred to employment with it since October 13, 1997, but were not referred because of its unlawful refusal to honor the referral provisions of its collective-bargaining contracts with the above-named labor organization, for lost wages, calculated in accordance with *Ogle Protection Service*, 183 NLRB 682, 683 (1970), and, also, for any losses resulting from its failure to make contractual welfare and pension payments, in the manner prescribed in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). The method of determining any amounts owing to benefit funds shall be that specified in *Merryweather Optical Co.*, 240 NLRB 1213

(1979). Interest shall be paid on any money due and owing employees as computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). See generally, *Our Lady of Lourdes Health Center*, 306 NLRB 337 fn. 1 (1992).

Inasmuch as it has no office or other facility in the Minneapolis-St. Paul metropolitan area to which employees ordinarily would go, Freeman Decorating Co. shall be ordered to duplicate and mail, at its own expense, a copy of the attached notice marked "Appendix C" to each employee employed by it in the bargaining unit set forth above and, as well, to every additional employee listed for referral by United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U since October 13, 1997. To further ensure that no employee who should have been represented by that labor organization when working for Freeman Decorating Co., or who should have worked for that employer since October 13, 1997 is overlooked, additional copies of that notice marked "Appendix C" shall be signed by an authorized representative of Freeman Decorating Co. and forthwith returned to the Regional Director for posting by United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U, it being willing, at facilities in the Minneapolis-St. Paul, Minnesota metropolitan area where it customarily posts notices to members and employees.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:[14]

ORDER

Brede, Inc., its officers, agents, successors and assigns, shall:

1. Cease and desist from

(a) Rendering unlawful assistance and support to United Food & Commercial Workers International Union, Local No. 653, by granting it recognition as the collective-bargaining representative of employees in the appropriate bargaining unit set forth in subparagraph (b) below, unless and until it becomes certified by the National Labor Relations Board as the exclusive collective bargaining representative of employees in that bargaining unit.

(b) Withdrawing recognition from United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U, as the exclusive collective bargaining representative of employees in the appropriate bargaining unit set forth below, at a time when there are unremedied unfair labor practices which naturally tend to undermine employee-support for that labor organization, and which thereby preclude employees from making a free and uncoerced choice of representation by a different collective bargaining representative. The appropriate bargaining unit is:

> All on-call, casual, extra employees employed by Brede, Inc. as journeypersons or helpers during at least two shows, exhibitions, and/or conventions at facilities located in the Minneapolis-St. Paul, MN metropolitan area for at least five working days during the

[14] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

past twelve months or who have been employed by Brede, Inc. at such events for at least 15 days within the past two years; excluding office clerical employees, professional employees, managerial employees, all other employees currently covered by other collective bargaining agreements, and guards and supervisors as defined in the National Labor Relations Act, as amended.

(c) Rejecting requests to bargain made by, and failing and refusing to bargain with, United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U concerning employment terms and conditions of all employees in the appropriate bargaining unit set forth in subparagraph (b) above, even though those employees have been referred to employment with Brede, Inc. by a different labor organization.

(d) In any like or related manner, interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act

(a) Resume recognizing and, upon request, bargain with United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U about employment terms and conditions of all employees employed in the appropriate bargaining unit set forth in paragraph 1.(b) above, regardless of whether those employees have been referred to employment in that bargaining unit by a different labor organization, and embody any agreement reached as a result of that bargaining in a written contract.

(b) Within 14 days after service by the Region, post at its Minneapolis, Minnesota, office and place of business copies of the attached notice marked "Appendix A".[15] Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by its duly authorized representative, shall be posted by Brede, Inc. and maintained for 60 consecutive days in conspicuous places, including all places where notice to employees are customarily posted. Reasonable steps shall be taken by it to ensure that notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, Brede, Inc. has gone out of business or closed its Minneapolis office and place of business involved in these proceedings, it shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by it in the Minneapolis-St. Paul metropolitan area at any time since November 5, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that it has taken to comply.

United Food & Commercial Workers International Union, Local No. 653, its officers, agents and representatives, shall:

1. Cease and desist from

[15] If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(a) Telling employees that they must sign its membership application or authorization card before they will be allowed to work for Freeman Decorating Co., or for any other employer.

(b) Demanding or accepting recognition from Brede, Inc., as the exclusive collective bargaining representative of employees in a bargaining unit of, all on-call, casual, extra employees employed by Brede, Inc. as journeypersons or helpers during at least two shows, exhibitions and/or conventions at facilities located in the Minneapolis-St. Paul, MN metropolitan area for at least five working days during the past twelve months or who have been employed by Brede, Inc. at such events for at least 15 days within the past two years; excluding office clerical employees, professional employees, managerial employees, all other employees currently covered by other collective bargaining agreements, and guards and supervisors as defined in the National Labor Relations Act, as amended, unless and until such time as it is certified by the National Labor Relations Board as the exclusive collective-bargaining representative of all employees in that appropriate bargaining unit.

(c) Refusing to refer to employment with Excel Decorators, Inc., or any other employer, or otherwise causing or attempting to cause that employer or any other employer to discriminate against Daniel P. Brady, or any other employee, because of support for or activities on behalf of United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U, or any other labor organization.

(d) In any like or related manner, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act

(a) Within 14 days from the date of this Order, notify Daniel P. Brady in writing that it will refer him to Excel Decorators, Inc., and to any other employer to whom he is eligible to be referred, without regard to his support for, or activities on behalf of, United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U, or any other labor organization.

(b) Make whole Daniel P. Brady for any loss of earnings and other benefits he suffered because he was unlawfully not referred to employment with Excel Decorators, Inc. after May 1, 1998, with backpay to be computed as set forth in the Remedy section of this Decision and with interest to be paid on amounts owing.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all hiring records, referral and dispatch lists, referral slips and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its Plymouth, Minnesota facility and, as well, at any other hiring halls and facilities it maintains in the Minneapolis-St. Paul, Minnesota metropolitan area, copies of the attached notice marked “Appendix B”.[16] Copies of

[16] It this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading “POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD” shall read “POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF

Continued

the notice, on forms provided by the Regional Director for Region 18, after being signed by its duly authorized representative, shall be posted by United Food & Commercial Workers International Union, Local No. 653 and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by it to ensure that notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, United Food & Commercial Workers International Union, Local No. 653 has been dissolved or merged with any other labor organization, or has closed its above-mentioned offices, it shall duplicate and mail, at its own expense, a copy of the notice to all current members and employees, and to all former members and employees, whom it has referred to employment in the Minneapolis-St. Paul, Minnesota metropolitan area since November 26, 1997.

(e) Additional copies of the attached notice marked "Appendix B" shall be signed by a duly authorized representative of United Food & Commercial Workers International Union, Local No. 653, and forthwith returned to the Regional Director for posting by Excel Decorators, Inc. and by Brede, Inc., they being willing, at Minneapolis-St. Paul, Minnesota metropolitan area places of business where notices to employees are customarily posted by those employers.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that have been taken to comply.

Freeman Decorating Co., its officers, agents, successors and assigns, shall:

1. Cease and desist from

(a) Threatening to subcontract work to other employers unless unfair labor practice charges filed against it are withdrawn.

(b) Failing and refusing to honor the provisions of its collective-bargaining contracts with United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U – the exclusive collective bargaining representative of all employees in an appropriate bargaining unit of: All on-call, casual, extra employees employed by Freeman Decorating Co as journeypersons or helpers during at least two shows, exhibitions, and/or conventions at facilities located in the Minneapolis-St. Paul, MN metropolitan area for at least five working days during the past twelve months or who have been employed by Freeman Decorating Co. at such events for at least 15 days within the past two years; excluding office clerical employees, professional employees, managerial employees, all other employees currently covered by other collective bargaining agreements, and guards and supervisors as defined in the National Labor Relations Act, as amended – by disregarding their referral provisions and resorting to United Food & Commercial Workers International Union, Local No. 653 as the source for referrals of employees in the aforestated appropriate bargaining unit; recognizing United Food & Commercial Workers International Union, Local No. 653 as the collective-bargaining representative of bargaining unit employees whom it has referred; and, applying to any employees in that appropriate bargaining unit terms and conditions of employment other than those specified in collective-bargaining contracts with United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U.

_____

APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(c) In any like or related manner, interfering with, restraining or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act

(a) Honor the terms of collective-bargaining contracts with United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U, as the exclusive collective bargaining representative of all employees in the appropriate bargaining unit set forth in paragraph 1.(b) above.

(b) Bargain collectively with the labor organization named in subparagraph (a) above, as the exclusive collective bargaining representative of all employees in the appropriate bargaining unit set forth in paragraph 1.(b) above, and embody any agreement reached in a written contract.

(c) Make whole all employees employed in the bargaining unit set forth in paragraph 1.(b) above since October 13, 1997, and, in addition, all employees who should have been referred by United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U for work in that unit since October 13, 1997, but who were not referred as a result of the unlawful refusal to honor the referral provisions of collective-bargaining contracts with that labor organization, and, as well, benefit funds, with interest, in the manner prescribed in the Remedy section of this Decision.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amounts of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, duplicate and mail, at its own expense, copies of the attached notice marked "Appendix C"[17] to all employees employed in the bargaining unit set forth in Section 1.(b) above since October 13, 1997, and to any additional employees who since that date were on the referral lists of United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U for referral to work encompassed by that unit. Copies of the notice, on forms provided by the Regional Director for Region 18, shall be signed by a duly authorized representative of Freeman Decorating Co.

(f) Additional copies of that notice marked "Appendix C" shall be signed by a duly authorized representative of Freeman Decorating Co., and forthwith returned to the Regional Director for posting by United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U, it being willing, at any Minneapolis-St. Paul, Minnesota metropolitan area facility where it customarily posts notices to members and employees.

[17] If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Regional Director attesting to the steps that it has taken to comply.

Dated, Washington, D.C. August 9, 1999

WILLIAM J. PANNIER III
Administrative Law Judge

APPENDIX A

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

After a trial at which all parties had an opportunity to present evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act and we have been ordered to post this Notice.

The National Labor Relations Act gives all employees the following rights:

To organize
To form, join or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT render unlawful assistance and support to United Food & Commercial Workers International Union, Local No. 653 by granting it recognition, as the collective-bargaining representative of employees in the appropriate bargaining unit set forth below, unless and until it has been certified by the National Labor Relations Board as the exclusive collective bargaining representative of employees in that bargaining unit.

WE WILL NOT withdraw recognition from United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U, as the exclusive collective bargaining representative of employees in the appropriate bargaining unit set forth below, so long as there exist unremedied unfair labor practices committed by us which naturally tend to undermine your support for continued representation by that union and, thus, which preclude you from making a free and uncoerced choice of representation by a different union. The appropriate bargaining unit is:

All on-call, casual, extra employees employed by Brede, Inc. as journeypersons or helpers during at least two shows, exhibitions, and/or conventions at facilities located in the Minneapolis-St. Paul, MN metropolitan area for at least five working days during the past twelve months or who have been employed by Brede, Inc. at such events for at least 15 days within the past two years; excluding office clerical employees, professional employees, managerial employees, all other employees currently covered by other collective bargaining agreements, and guards and supervisors as defined in the National Labor Relations Act, as amended.

WE WILL NOT reject requests to bargain made by, and WE WILL NOT fail and refuse to bargain with, United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U concerning employment terms and conditions of all employees in the appropriate bargaining unit set forth above, even though those employees have been referred to employment with us by a different union.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce you in the exercise of your rights protected by the National Labor Relations Act.

WE WILL recognize and, upon request, bargain with United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U about employment terms and conditions of all employees employed in the appropriate bargaining unit set forth above, without regard to whether those employees have been referred to us for employment by another union, and embody any agreement reached as a result of that bargaining in a written contract.

BREDE, INC.

(Employer)

Dated _____ By _____

(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered with any other material. Any questions concerning this notice of compliance with its provisions may be directed to the Board's Office, Suite 790, Towle Building, 330 Second Avenue South, Minneapolis, MN 55401-2221, Telephone 612-348-1770.

APPENDIX B

NOTICE TO MEMBERS AND EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

After a trial at which all parties had an opportunity to present evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act and we have been ordered to post this Notice.

The National Labor Relations Act give all employees the following rights:

To organize
To form, join or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected activities.

WE WILL NOT tell you that you must sign our membership applications or authorization cards before we will allow you to work for Freeman Decorating Co., or any other employer.

WE WILL NOT demand nor accept recognition as the collective-bargaining representative of all on-call, casual, extra employees employed by Brede, Inc. as journeypersons or helpers during at least two shows, exhibitions, and/or conventions at facilities located in the Minneapolis-St. Paul, MN metropolitan area for at least five working days during the past twelve months or who have been employed by Brede, Inc. at such events for at least 15 days within the past two years; excluding office clerical employees, professional employees, managerial employees, all other employees currently covered by other collective bargaining agreements, and guards and supervisors as defined in the National Labor Relations Act, as amended, unless and until such time as we have been certified by the National Labor Relations Board as the exclusive collective bargaining representative of all those employees.

WE WILL NOT refuse to refer to employment with Excel Decorators, Inc., or any other employer, and WE WILL NOT cause or attempt to cause that employer or any other employer to otherwise discriminate against, Daniel P. Brady or any other employee because of support for, or activities on behalf of, United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U, or any other union.

WE WILL NOT in any like or related manner, restrain or coerce you in the exercise of your rights protected by the National Labor Relations Act.

WE WILL, within 14 days from the date of the Order, notify Daniel P. Brady in writing that we will refer him to Excel Decorators, Inc., and to any other employer to whom he is eligible to be referred, without regard to his support for, or activities on behalf of, United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U, or any other union.

WE WILL make whole Daniel P. Brady for any loss of earnings and other benefits suffered because we unlawfully refused to refer him to employment with Excel Decorators, Inc. after May 1, 1998, less any net interim earnings, plus interest.

UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL NO. 653

(Labor Organization)

Dated _____ By _____

(Representative) (Title)

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APPENDIX C

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

After a trial at which all parties had an opportunity to present evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act and we have been ordered to post this Notice.

The National Labor Relations Act gives all employees the following rights:

To organize
To form, join or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten to subcontract our work to other employers unless unfair labor practice charges filed against us are withdrawn.

WE WILL NOT fail and refuse to honor our collective-bargaining contracts with United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U, as the exclusive collective bargaining representative of all employees in the appropriate bargaining unit set forth below, by disregarding their referral provisions and, instead, seeking referrals for employees in that bargaining unit from United Food & Commercial Workers International Union, Local No. 653. The appropriate bargaining unit is:

> All on-call, casual, extra employees employed by Freeman Decorating Co. as journeypersons or helpers during at least two shows, exhibitions, and/or conventions at facilities located in the Minneapolis-St. Paul, MN metropolitan area for at least five working days during the past twelve months or who have been employed by Freeman Decorating Co. at such events for at least 15 days within the past two years; excluding office clerical employees, professional employees, managerial employees, all other employees currently covered by other collective bargaining agreements, and guards and supervisors as defined in the National Labor Relations Act, as amended.

WE WILL NOT recognize United Food & Commercial Workers International Union, Local No. 653 as the collective bargaining representative of employees in the appropriate bargaining unit set forth above, whom it refers to us during the term of collective-bargaining contracts between us and United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U.

WE WILL NOT apply to any employees in the appropriate bargaining unit set forth above terms and conditions of employment other than ones specified in our collective-bargaining contracts with United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U.

WE WILL NOT in any like of related manner, interfere with, restrain or coerce you in the exercise of your rights guaranteed by the National Labor Relations Act.

WE WILL honor our collective-bargaining contracts with United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U, as the exclusive collective bargaining representative of all employees in the appropriate bargaining unit set forth above.

WE WILL, upon request, bargain collectively with United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U, as the exclusive collective bargaining representative of all employees in the appropriate bargaining unit set forth above, and embody any agreement reached in a written contract.

WE WILL make whole all employees employed in the bargaining unit set forth above who have worked on our shows, exhibitions and conventions in the Minneapolis-St. Paul, Minnesota metropolitan area since October 12, 1997, and also benefit funds, for any loss of pay and benefits suffered by our failure to honor our collective-bargaining contracts with United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U, plus interest.

WE WILL make whole all employees who should have been referred to employment with us in the bargaining unit set forth above since October 13, 1997, but who were not referred because of our failure to honor referral provisions of our collective-bargaining contracts with United Steelworkers of America, AFL-CIO, CLC, Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local No. 17U, as well as benefit funds, for any loss of pay and benefits specified in those contracts, plus interest.

FREEMAN DECORATING CO.

(Employer)

Dated _____ By _____

(Representative) (Title)

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